92-824

No. _____

Supreme Court, U.S.
FILED
NOV 12 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

GREAT DANE TRAILERS, INC.

Petitioner,

versus

RONALD RUFFIN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

James B. Spears, Jr.
Counsel of Record
HAYNSWORTH, BALDWIN,
JOHNSON & GREAVES, P.A.
901 West Trade Street
Suite 1050
Charlotte, NC 28202
(704) 342-2588

October 1992

QUESTIONS PRESENTED

1. Where a trial court orders only a very limited injunction after a Title VII trial in which a plaintiff sought across-the-board injunctive and monetary relief for numerous claims of employment discrimination, is the plaintiff a "prevailing party" within the meaning of 42 U.S.C. § 1988 and this Court's decision in Garland?*

2. Where only a very limited injunction has been ordered, does the fact that it may later be enforced in a contempt proceeding satisfy this Court's requirement for a "material alteration" of the litigants' legal relationship within the meaning of this Court's decision in Garland?

3. Is an employer's failure to appeal a trial court's limited injunction, its findings of fact or legal conclusions an appropriate factor for reversing a trial court's decision to deny an attorneys' fee award?

*Texas State Teachers Ass'n v. Garland, 489 U.S. 782 (1989)

TABLE OF CONTENTS

PAGE

OPINIONS BELOW 1

JURISDICTION 2

STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING CERTIORARI:

1. The Appeals Court Failed To Apply The Standards Set Forth In Garland, 489 U.S. 782 (1989) 12

2. The Eleventh Circuit's Application of Garland Conflicts With Other Appeals Courts' Decisions 20

3. This Court's Decision To Grant Certiorari In Estate of Farrar v. Hobbey, 941 F.2d 1311 (5th Cir. 1991), cert. granted, ____ U.S. ____, 112 S. Ct. 1159 (1992), Confirms The Importance Of Resolving This Case Under A Proper Interpretation Of Garland 24

CONCLUSION 26

APPENDICES:

1. Plaintiff's Complaint A-1

2. District Court's Findings of Facts and Conclusions of Law A-8

3. District Court's Judgment A-35

4. Eleventh Circuit's Opinion A-37

5. Statutory Provisions A-59

TABLE OF AUTHORITIES

CASES — PAGE(S)

Christopher P. v. Marcus,
915 F.2d 794 (2nd Cir. 1990),
cert. denied, 111 S. Ct. 1081
(1991) 21

Estate of Farrar v. Cain,
941 F.2d 1311 (5th Cir. 1991),
cert. granted, ___ U.S. ___,
112 S. Ct. 1159 (1992) 21, 24

Hanrahan v. Hampton,
446 U.S. 754 (1980) 12

Hensley v. Eckerhart,
461 U.S. 424 (1983) 12, 15, 19, 24

Hewitt v. Helms, 482 U.S. 755
(1987) 13, 14, 16, 19, 23, 24

Langton v. Johnston, 928 F.2d
1206 (1st Cir. 1991) 22

Lewis v. Kendrick, 944 F.2d
949 (1st Cir. 1991) 21

Nadeau v. Helgemoe,
581 F.2d 275 (1st Cir. 1978) 12, 13

CASES PAGE(S)

New York City Unemployed & Welfare Council v. Brezenoff, 677 F.2d 232 (2d Cir. 1982) 19

New York City Unemployed & Welfare Council v. Brezenoff, 742 F.2d 718 (2d Cir. 1984) 18

Northbrook Excess & Surplus Ins. Co. v. Proctor & Gamble Co., 924 F.2d 633 (7th Cir. 1991) 20

Rhodes v. Stewart, 488 U.S. 1 (1988) 13, 14, 16, 19, 23, 24

Slade v. United States Postal Service, 952 F.2d 357 (10th Cir. 1991) 22

Texas State Teachers Ass'n v. Garland Independent School Dist., 489 U.S. 782 (1987) . . . . . passim

STATUTES — PAGE(S)

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq. 2

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(k) 2

Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988 2

OPINIONS BELOW

Ronald Ruffin sued his employer claiming numerous instances of race discrimination in his employment. (Pet. App. A-1 - A-7). Finding only a very limited entitlement to relief, the Trial Court denied an attorneys' fee award. (Pet. App. A-33 - A-34). Ruffin appealed only the denial of attorneys' fees. (Pet. App. A-38). The Eleventh Circuit reversed the Trial Court's denial of attorneys' fees and rejected Petitioner's argument that the Trial Court's nominal injunctive relief was only a technical or de minimis victory. (Pet. App. A-37 - A-58). The Appeals Court's theory was that any court-ordered relief that could subsequently be enforced through a contempt proceeding constitutes the necessary material alteration mandated by this Court in Texas State Teachers Ass'n v. Garland Indep. School Dist., 489 U.S. 782 (1989). There, the Supreme Court made clear that a party must achieve more than merely a technical or de minimis victory before an attorneys' fee is statutorily authorized.

The Appeals Court concluded Ruffin met the statutory requirements for a fee award.

JURISDICTION

The opinion and judgment of the Court of Appeals was entered on August 20, 1992. (Pet. App. A-37 - A-58). This petition for certiorari was filed in less than 90 days and is timely. The Supreme Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

This case arises under the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5k and the Civil Rights Attorneys Fees Award Act of 1976, 42 U.S.C. § 1988 (Pet. App. A-59 - A-61).

STATEMENT OF THE CASE

At the time of trial, Ruffin was a mechanic in Petitioner's tractor trailer repair shop. In his Title VII

Complaint he alleged that he had been repeatedly discriminated against because of his race, black, by management's failure to grant him various promotions, several wage increases, and more desirable job assignments. He also claimed he had suffered numerous instances of discriminatory discipline and racial harassment from coworkers "without any corrective action being taken [by management]" (emphasis added). (Pet. App. A-3 - A-5). Ruffin's claims covered the years 1987, 1988, 1989, 1990 and 1991.

Following a two-day trial, the Honorable Sam C. Pointer, Jr. ruled in favor of Defendant on all of Plaintiff's claims for discriminatory promotions, wage increases, discipline and job assignments. The Trial Court awarded no monetary damages; it did not require the employer to promote him, change his job classification, alter his job assignments, give him additional seniority, increase his pay, benefits, pension, or, remove or modify any discipline

against him.[1] Similarly, the court did not grant the additional across-the-board injunction sought in Ruffin's Complaint. (Pet. App. A-6, Prayer for Relief, paragraph 2).

The Court expressed concern about an isolated coworker harassment incident "back during that period of time [1987]." (Pet. App. A-26). The Trial Court's description of the 1987 incident reveals the isolated nature of this incident:

> There is an incident that occurred in or around the close of the year 1987 certainly as to which this Court would be concerned and is concerned. An incident in

---

[1]Plaintiff's Complaint sought numerous injunctive and monetary remedies including a court order:

> requiring the defendant to make the plaintiff whole by awarding him the position he would have [sic] occupied in the absence of race discrimination, back pay (plus interest), compensatory damages, lost seniority, benefits and loss of pension.

Pet. App. A-6.

which a noose was prepared using heavy rope by white mechanics and ultimately the noose was put around Mr. Ruffin's neck by one of these white mechanics. These are coworkers and not supervisors.

Mr. Ruffin made a complaint to management about what had occurred and management did immediately make an inquiry investigation into it. Management got conflicting stories with the whites who were involved having indicated that, number one, it had not originally been prepared in any way as something directed to Mr. Ruffin and that in any event it was a matter simply of a joke and no offense taken in the eyes of the whites and that Mr. Ruffin, himself, had engaged in some horseplay or joking use of the noose at the same time. Mr. Ruffin's version, of course, was different as to what happened and it has been different in this trial.

Management, confronted with the two different stories, without making a decision as to which story or which version to believe, said that certainly an apology was due to Mr. Ruffin from the whites who were involved and indeed that apology was given. So far as management was aware, that had satisfied Mr. Ruffin. Obviously it did not satisfy him, but at least in terms of responding later to management, he did not indicate that he was still unhappy with what had occurred or what action management

> had taken or failed to take of a more severe nature.

(Pet. App. A-26 - A-27)(emphasis added). The Trial Court emphasized that since 1987, the Company had taken steps designed to eliminate such incidents:

> Since that incident in late 1987 it's clear to the Court that management has taken a more active role in reducing the amount of offensive language and joking that had been going on prior to that time. . . .
>
> Management has taken disciplinary action since that time with respect to individuals, where it was reported to management, that these things had occurred. [I]t is clear to the Court based on the evidence presented that management does view that as inappropriate behavior and is prepared to impose appropriate discipline when called to its attention.

(Pet. App. A-27 - A-28)(emphasis added). Although Ruffin presented the Court with other harassment claims allegedly directed toward him after the 1987 noose incident, the Trial Court did not find any Title VII violations regarding any of these occurrences. For

example, the Trial Court rejected Ruffin's racial claim that his coworkers frequently referred to him as "Rondo." (Pet. App. A-25 - A-26).

The Trial Court issued a very narrow injunction requiring only that the employer be "more affirmative and more aggressive" in its efforts to create a non-offensive work environment in its shop area. The Court made clear the limited scope of its injunction:

> I am going to enjoin the company to take active steps to reduce and eliminate the racial joking and slurs and episodes in the shop area. The wording of an injunction of this sort is very difficult. And it is, as I say, clear to me that the company has attempted or started in that area, has undertaken from time to time disciplinary action. But I think the Court is essentially requiring now, given this evidence, the company to be more affirmative and more aggressive in its efforts to correct that situation, that environment in the shop.

(Pet. App. A-32 - A-33)(emphasis added). Significantly, this nominal injunction did not require Defendant to implement any new policy or procedure. It did not

require management to do any specific act regarding Ruffin or to change anything it had already done to address any coworker harassment incident. It only required the Company to make more aggressive efforts to create a non-offensive work environment.

The Trial Court denied Ruffin's request for attorneys' fees and summarized its decision as follows:

> The plaintiff, I'm sure must feel like he has lost in the case. I think it is fair to say in general he has lost in this case even though the Court does find on this area an entitlement to relief.

(Pet. App. A-33). Ruffin appealed only the trial court's denial of attorneys' fees. The Eleventh Circuit decided Judge Pointer had applied the correct legal standard in evaluating Ruffin's request for attorneys' fees; nevertheless, it concluded the Trial Court had abused its discretion in denying an attorneys' fee award. (Pet. App. A-58).

The Appeals Court decided Ruffin had met the Garland standards for an attorneys' fee award simply by obtaining some injunctive relief. The Appeals Court outlined its analysis as follows:

> By virtue of the court's grant of injunctive relief, Great Dane is now under a legal obligation to correct the racist behavior at its jobsite. Accordingly, Ruffin may now protect his rights through a civil contempt proceeding in the event that Great Dane's compliance with the court's injunction is not forthcoming. Given the alteration of Ruffin's legal rights and Great Dane's legal obligations that resulted from the court's grant of injunctive relief, there is no question that Ruffin prevailed on this issue before the district court, or that, consequently, he satisfied the Garland standard and is entitled to an award of attorneys' fees.

(Pet. App. A-50 - A-51)(emphasis added)(citations omitted). Thus, the Appeals Court concluded that where a remedial obligation exist vel non, a plaintiff qualifies for an award of attorneys' fees.

The Appeals Court's analysis omits the key inquiry under Garland: Does the judicial relief materially alter the parties' legal relationship? By failing to address this question, the Appeals Court ignored a primary requirement in Garland; i.e., that a material alteration of the litigants' legal relationship result from the litigation. The Appeals Court decision reflects an erroneous interpretation of Garland that any remedial order at all, regardless of how little it impacts the parties' conduct toward each other, constitutes a "material alteration."

The Appeals Court decision was not premised solely on a restricted view of the Garland requirements. The Appeals Court further explained its decision by holding that the Petitioner's failure to appeal the Trial Court's factual findings, legal conclusions or remedy somehow confirmed that the narrow injunction here constituted a "material alteration" under Garland. The Appeals Court explained:

> Appellee [employer] does not challenge the award of injunctive relief, nor does it suggest that the court's finding that Great Dane has failed to address adequately the problem of jobsite racism is clearly erroneous. Given the district court's unchallenged findings, we cannot hold that the court's injunction did not materially alter the relationship . . . .

(Pet. App. A-57)(emphasis added). This purported justification provides no relevant consideration for evaluating whether a material alteration has occurred. Carried to its logical end, this backward reasoning penalizes a party for not appealing the merits of a case in which it scored a substantial victory if there is any minor injunctive relief ordered by a court. Such a result could generate appeals even where a trial court's injunction in no meaningful way changes the parties' relationship, notwithstanding the fact that a defendant really was the "prevailing party" in the case. In such circumstances, compliance with a nominal injunction is a far easier thing to bear rather than the costs of a protracted appeal.

REASONS FOR GRANTING CERTIORARI

1. The Appeals Court Failed To Apply The Standards Set Forth In Garland, 489 U.S. 782 (1989).

A plaintiff has crossed the statutory threshold to a fee award only when he has succeeded ". . . 'on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit' . . . ." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983) (quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-79 (1st Cir. 1978)) (emphasis added). However, to achieve success on "any significant issue" means more than simply a judicial determination that a violation has occurred. A plaintiff must obtain "some relief on the merits," Garland, 489 U.S. at 790 (citing Hanrahan v. Hampton, 446 U.S. 754, 757 (1980))(emphasis added). Under Garland, such "relief" must not only "change the legal relationship between the plaintiff and the defendant . . . ." (489 U.S. at 792); it must also be a material change in their relationship:

> The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute.

489 U.S. at 792-93 (emphasis added). Thus, where there has been no legal relationship change or, where only a minor or de minimis alteration of the parties' relationship would result, an attorneys' fee is not authorized under Title VII or § 1988.

A remedy which is only technical or de minimis would fail to satisfy even the "generous formulation" adopted in Garland:

> [A] technical victory may be so insignificant, and may be so near the situations addressed in Hewitt and Rhodes, as to be insufficient to support prevailing party status . . . . Where the plaintiff's success on a legal claim can be characterized as purely technical or de minimis, a district court would be justified in concluding that even the "generous formulation" we adopt today has not been satisfied. (quoting Nadeau v. Helgemoe, 581 F.2d at 279, n.3).

489 U.S. at 792 (emphasis added). To be "so near the situations" represented by Hewitt and Rhodes[2] cannot be limited only to cases where plaintiffs receive absolutely no benefit from litigation. In Ruffin, the Eleventh Circuit has failed to apply this part of Garland by its misdirected focus upon the mere availability of an enforcement mechanism.[3]

Many cases, like the present one, qualify as de minimis or technical victories. District Judge Pointer was

---

[2]Hewitt v. Helms, 482 U.S. 755, 107 S.Ct. 2672 (1987); Rhodes v. Stewart, 488 U.S. 1, 109 S.Ct. 202 (1988).

[3]The Eleventh Circuit's underlying rationale in Ruffin ignores the analytical principles required by Garland, even while purporting to follow Garland's analytical framework. The Supreme Court in Garland focused on how a remedy impacts the parties' relationship, not what could happen if a party elects to ignore the remedy. The Eleventh Circuit's decision that Ruffin should be a prevailing party simply because injunctive relief could later be enforced through a contempt proceeding does not begin to address the correct question. Any remedy, injunctive or otherwise, would certainly satisfy the Eleventh Circuit's elementary test.

certainly correct, in light of the nominal relief ordered in this case, in finding that Ruffin did not qualify as a prevailing party. The court's conclusion that Plaintiff had "lost in this case" (Pet. App. A-35), is entirely consistent with Garland's standards for denying an attorneys' fee. Although a minimal injunction was ordered in this case, the limited scope of the injunction fully supports the Trial Court's decision that an attorneys' fee was not appropriate. Compared with the laundry list of injunctive and monetary remedies Ruffin actually sought in this litigation (Pet. App. A-6 - A-7), the court's minimal injunction clearly constitutes, at most, only a minor change in the Company's relationship with him.

On the other hand, the Eleventh Circuit's misdirected analysis is inconsistent with the Supreme Court's rationale in Hensley. There, this Court noted:

> The result is what matters . . . . Congress has not authorized an award of fees whenever it was reasonable for a plaintiff to

> bring a lawsuit or whenever conscientious counsel tried the case with devotion and skill. Again, the most critical factor is the degree of success obtained.

461 U.S. at 435-436 (emphasis added). Clearly, this Court's recognition of "degree[s] of success" confirms that the specific circumstances of Hewitt and Rhodes do not represent the only two examples of technical or de minimis victories in which Congress expected trial courts to deny attorneys' fees.

In Garland, this Court demonstrated the analysis it now requires before an attorneys' fee is allowed. This Court cited with approval examples of purely technical or de minimis successes which failed to qualify a plaintiff as a prevailing party. Each example represents a judicial result greater than those achieved in Hewitt and Rhodes. In fact, in each case, the plaintiff achieved a materially more significant victory than resulted in this case. For example, in Garland itself, the trial court invalidated a

school district's rule requiring a school principal's approval in advance of teachers' meetings on school grounds after regular school hours. 489 U.S. at 786-87. The plaintiffs clearly succeeded in getting judicial relief requiring the defendants to stop using this rule. Nevertheless, this Court recognized that this example of a limited judicial victory would have been insufficient to recognize them as prevailing parties for purposes of an attorneys' fee. "If this had been petitioners' only success in the litigation, we think it clear that this alone would not have rendered them 'prevailing parties' within the meaning of § 1988." 489 U.S. at 786-87.

Here, Judge Pointer's narrow injunction did not require Petitioner to stop doing anything at all; in fact, it only required Petitioner to increase the types of things which, on its own initiative, it had already begun doing to reduce incidents of coworker harassment. It is significant that the injunction here requires no particular steps or any

new policy from management. Clearly, the court believed that this very mild injunction was sufficient in light of the factual findings and legal conclusions it had made. Additionally, however, it also demonstrates how little success Ruffin can claim in this case, especially when the narrow injunction is compared to the numerous injunctive and monetary remedies Ruffin sought through this litigation. (Pet. App. A-5 - A-6).

Next, the Supreme Court in Garland also cited with approval New York City Unemployed & Welfare Council v. Brezenoff, 742 F.2d 718 (2d Cir. 1984)(Brezenoff II)[4], as another example that every victory by a plaintiff does not justify "prevailing party" status. In that case, plaintiffs obtained a court order requiring defendants to modify one out of four regulations challenged by the lawsuit. See

---

[4]See also, New York City Unemployed and Welfare Council v. Brezenoff, 677 F.2d 232 (2d Cir. 1982) (Brezenoff I).

Brezenoff I, 677 F.2d at 235. This court-ordered modification of defendants' regulation achieved one of the goals for the litigation; it allowed plaintiffs' greater access to welfare patients. Nevertheless, this Court endorsed the Second Circuit's holding that "[t]he district court's denial of attorney's fees in this instance is reasonable in relation to the results obtained." 742 F.2d at 724, n.4 (quoting Hensley v. Eckerhart, 461 U.S. at 438, 103 S. Ct. at 1942.); Garland, 489 U.S. at 792.

Clearly, as shown by Bresenoff II, every judicial "remedy" does not justify an attorneys' fee. The plaintiffs, like Ruffin here, had unsuccessfully sought far more remedies through the litigation. However, their limited judicial "success" resulted in only a minor or nominal change. Thus, while Hewitt and Rhodes may represent the clearest examples, they do not represent the exclusive remedial circumstances where an attorneys' fee should be denied. The Eleventh Circuit decision in Ruffin

necessarily rejects both principles from Court's Garland decision.

2. The Eleventh Circuit's Application of Garland Conflicts With Other Appeals Courts' Decisions.

In Ruffin, the existence of a defendant's remedial obligation vel non, satisfied the Appeals Court's interpretation of Garland's requirement for a material alteration. In contrast, other appeals courts have correctly applied Garland to reject certain plaintiffs as prevailing parties where their victories were found to be only technical or de minimis under Garland.

Examples of correctly decided decisions include notable damage awards which, when juxtaposed with the actual remedial goals each plaintiff sought through litigation, were judged to be insufficient under Garland. For example, in Northbrook Excess & Surplus Ins. Co. v. Proctor & Gamble Co., 924 F.2d 633, 641-42 n.11 (7th Cir. 1991), a plaintiff's recovery of $45,000 was held to be de

minimis in light of his claim for more than $5 million. Similarly, the First Circuit in Lewis v. Kendrick, 944 F.2d 949, 954-56 (1st Cir. 1991), recognized that a jury verdict of $1,000 was only a technical and de minimis victory because the plaintiff had sought $300,000. Likewise, the Fifth Circuit recognized that nominal damages of $1.00 was insufficient under Garland to qualify a plaintiff as a prevailing party where 17 million dollars had been sought. Estate of Farrar v. Cain, 941 F.2d 1311 (5th Cir. 1991), cert. granted, ___ U.S. ___, 112 S. Ct. 1159 (1992).

Other circuit courts have similarly denied prevailing party status in cases not involving monetary awards. For example, in Christopher P. v. Marcus, 915 F.2d 794 (2nd Cir. 1990), cert. denied, 111 S. Ct. 1081 (1991), the plaintiff obtained temporary injunctive relief which effectively placed him back in the school which was a primary goal of his lawsuit. However, after analyzing the Garland requirements, the plaintiff was found not to be a

"prevailing party." Id. at 805. Similarly, in Slade v. United States Postal Service, 952 F.2d 357, 361-62 (10th Cir. 1991), the Tenth Circuit concluded that plaintiff was not a prevailing party although he had obtained the important right to be evaluated in his employment based on nondiscriminatory criteria.

The First Circuit has also demonstrated the proper application of Garland by rejecting an attorneys' fee for a plaintiff who had "won" only nominal nonmonetary relief. In Langton v. Johnston, 928 F.2d 1206, 1226 (1st Cir. 1991), the plaintiff had failed on many issues in a case involving prisoner rights. However, he had achieved success on a single issue involving the defendants' practice of "double bunking" inmates. The appeals court held he should not be awarded an attorneys' fee if that issue was of only minor significance:

> And if, indeed, the double-bunking point was of "minor significance" given the scope and tenor of the litigation as a whole, legal

> services rendered in respect to it would not be compensable. See Texas Teachers, 489 U.S. at 792, 109 S. Ct. at 1493.

Id.

These other appeals courts have properly concluded that certain judicial remedies, although greater than the unique situations represented by Hewitt and Rhodes, did not materially alter the litigants' relationships as required by Garland. The Eleventh Circuit's Ruffin decision stands in stark contrast to this array of appeals court decisions which have properly applied Garland to deny attorneys' fees to plaintiffs who succeeded only in a minor or technical sense.

The Eleventh Circuit's departure from the results in these comparable cases is significant beyond the inconsistency itself. Garland's requirements cannot be reduced to a mechanical determination of whether or not an enforcement proceeding is available. Indeed, if the Eleventh Circuit's cursory analysis is allowed to determine

prevailing party status, this Court's consistent analysis in Hensley, Hewitt, Rhodes, and particularly Garland, was unnecessary for resolving attorneys' fee disputes. This Court should resolve the Ruffin decision's conflict with other circuit courts' proper application of Garland.

3. This Court's Decision To Grant Certiorari In Estate of Farrar v. Hobbey, 941 F.2d 1311 (5th Cir. 1991), cert. granted, ___ U.S. ___, 112 S. Ct. 1159 (1992), Confirms The Importance Of Resolving This Case Under A Proper Interpretation Of Garland.

Granting this Petition provides this Court with an excellent opportunity to fully clarify Garland's proper application when a trial court orders only nominal relief. This case presents essentially the same issue accepted for review in the Hobbey decision; i.e., whether a plaintiff's success in litigation which results in only a minimal remedy justifies an award of an attorneys' fee. In Hobbey the sole relief obtained was a monetary judgment for nominal damages; here, the sole relief obtained was a

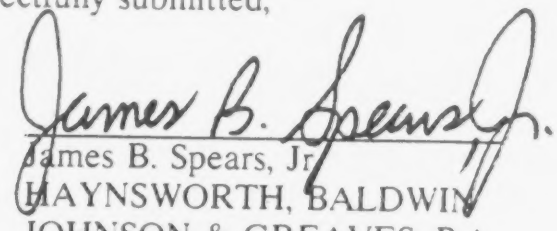
nominal injunction. The judicial character of the relief should not alter the critical determination of whether any minimal judicial relief constitutes a technical or de minimis victory under Garland. Thus, this case should be reviewed along with Hobbey.

Here the Trial Court correctly determined that its nominal injunction failed to qualify Ruffin for an attorneys' fee award. The Eleventh Circuit's mechanical reasoning for reversing the lower court represents a misguided approach which should not remain unresolved by this Court. The Eleventh Circuit's erroneous analysis in this case, not present in Hobbey, strongly supports a need to fully clarify this Court's Garland criteria so that lower courts can properly resolve attorneys' fee disputes when only nominal injunctive relief is awarded.

CONCLUSION

The decision of the Eleventh Circuit in Ruffin represents an erroneous and distorted application of Garland which should be reviewed and reversed by this Court.

Respectfully submitted,

By: 

James B. Spears, Jr.
HAYNSWORTH, BALDWIN
JOHNSON & GREAVES, P.A.
910 W. Trade Street
Suite 1050
Charlotte, NC 28210
(704) 342-2588

November 1992

92-824

No. _____

Supreme Court, U.S.
FILED
NOV 12 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

GREAT DANE TRAILERS, INC.

Petitioner,

versus

RONALD RUFFIN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

James B. Spears, Jr.
Counsel of Record
HAYNSWORTH, BALDWIN,
JOHNSON & GREAVES, P.A.
901 West Trade Street
Suite 1050
Charlotte, NC 28202
(704) 342-2588

October 1992

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ALABAMA
Southern Division
Civil Action No. CV 89-P-1951-S

RONALD RUFFIN,)
)
Plaintiff,)
)
-vs.-)
)
GREAT DANE TRAILERS, INC.)
)
Defendant.)

COMPLAINT

I. JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to the Act of Congress known as 28 U.S.C. Section 1331, 1343(4) and 28 U.S.C. Sections 2201 and 2202, 42 U.S.C. Section 2000e et seq. This is a suit in equity authorized and instituted pursuant to Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq, 42

U.S.C. Section 1981. The jurisdiction of this Court is invoked to secure protection of and redress deprivation of rights secured by 42 U.S.C. Section 2000e et seq. providing for injunctive and other relief against race discrimination and retaliation.

2. Plaintiff has fulfilled all conditions precedent to the institution of this action under Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq. Plaintiff timely filed his charge of race discrimination within 180 days of occurrence of the last discriminatory act. Plaintiff also timely filed his race claim within 90 days of the receipt of his right-to-sue letter from the E.E.O.C.

II. PARTIES

3. Plaintiff, Ronald Ruffin, is a citizen of the United States, and is a resident of the State of Alabama.

The plaintiff is employed by the defendant at its Birmingham location.

4. Defendant, Great Dane Trailers, is a corporate entity subject to suit under Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq. The defendant employs at least fifteen (15) persons.

III. CAUSES OF ACTION

5. The plaintiff re-alleges and incorporates by reference paragraphs 1-4 above with the same force and effect as if fully set out in specific detail hereinbelow.

6. The defendant discriminated on the basis of race against the plaintiff with respect to the promotions, wages, discipline, job assignments, and other terms, conditions, and privileges of employment.

7. The plaintiff was denied the opportunity to contract with the defendant for the position of Class A

mechanic. The plaintiff is rated a Class B mechanic, even though he has all the experience and knowledge as the white mechanics who have contracted with the defendant to be rated Class A.

8. The defendant assigns the best assignments of work to white employees. Whereas, the plaintiff is given the most difficult assignments of work even though plaintiff has more seniority that the white employees. For example, the plaintiff has not been allowed to drive even though he is qualified to do so.

9. The plaintiff is required to perform tasks in less time than white employees who have a helper in doing the same tasks.

10. The plaintiff is not disciplined in the same manner as the white employees.

11. The plaintiff has had to suffer racial slurs and derogatory actions from co-employees without any relief from supervision. The plaintiff has reported these

incidents to his supervisor without any corrective action being taken.

12. The plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for back-pay, an injunctive and a declaratory judgment is his only means of securing adequate relief. The plaintiff is now suffering and will continue to suffer irreparable injury from the defendant's unlawful policies and practices as set forth herein unless enjoined by this Court.

IV. PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:

1. Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the defendant are violative of the rights of the plaintiff as secured by Title VII of the Act of Congress

known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq.

2. Grant plaintiff a permanent injunction enjoining the defendant, its agents, successors, employees, attorneys and those acting in concert with the defendant and at the defendant's request from continuing to violate and Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq.

3. Enter an Order requiring the defendant to make the plaintiff whole by awarding him the position he would have had occupied in the absence of race discrimination, back-pay (plus interest), compensatory damages, lost seniority, benefits, and loss of pension.

The plaintiff further prays for such other relief and benefits as the cause of justice may require, including, but

not limited to, an award of costs, attorney's fees and expenses.

Respectfully submitted,

/s/
Melinda Lawrence Denham

OF COUNSEL:

GORDON, SILBERMAN, WIGGINS & CHILDS, P.C.
1400 SouthTrust Tower
Birmingham, Alabama 35203
(205) 328-0640

DEFENDANTS ADDRESS:

Great Dane Trailers
78 Bankhead Highway
Birmingham, Alabama

THE COURT: The Court will now dictate findings of fact and conclusions of law. These findings are based upon the evidence that's been presented during the trial of the case. The evidence consists of testimony of the various witnesses together with a number of exhibits that have been received into evidence.

This case has been brought by Ronald Ruffin against Great Dane Trailers, Incorporated, his employer. Mr. Ruffin, for the last thirteen years, has been employed as a mechanic by Great Dane. At the present time, his rate of pay is generally in the mid range of rates of pay that mechanics are being paid by Great Dane.

In this action under Title VII, Mr. Ruffin, a black male, asserts that he has been discriminated against because of his race by the defendant in essentially the four particulars. First, he says that he has been discriminated against because of his race in his pay and in particular in

his not being treated as a Class-A mechanic notwithstanding the fact that he has been employed for some thirteen years.

The second aspect is his claim that he has been given work assignments as a mechanic involving particularly dirty or difficult tasks and that his assignments of work have been affected by his race.

Third, he asserts that he has been subjected to disciplinary action both in terms of warnings and in terms of certain suspensions that were discriminatory against him because of his race.

And the fourth claim is that the work environment in and around the shop at Great Dane is racially offensive by reason of racial slurs, epithets, jokes and other incidents that make it offensive to a black person to work there.

The defendant noting that this charge giving rise to this case was filed with the EEOC in April 1988 has

asserted that the Court should not consider various matters that have occurred in the last year and a half that the plaintiff would say demonstrate unequal assignments, improper discipline or racially offensive matters. The defendant's position is that those should have been the subject of additional EEOC charges and ultimately additional cases or amendments to the complaint. I reject that contention by the defendant.

Where a charge involves claims of discriminatory treatment relating to the discipline and job assignments and the like and clearly is one that is claimed to be of a continuing nature subject to being repeated or manifested from time to time in different ways, it is clear to me that the initial charge vests the Court with jurisdiction to consider the additional incidents that are claimed to be simply new manifestations of the same complaint that are a part of the EEOC charge.

Accordingly, I do look in this case not only at those matters that may have occurred within 180 days prior to the filing of the charge in April of 1988 but, also, to those matters that have occurred since then that are closely related to and really a part of simply a claim of continuing repetitions of the matters contained in the charge.

I also consider evidence of matters that may have occurred long before 180 days prior to the filing of this action as perhaps circumstantial evidence that assists the Court in determining what went on during the period of time that is before the Court in terms of the charge and its 180 day period.

I now move into the recital of the facts as I find them to be under this evidence. I do note that counsel in their arguments have attempted to draw very fine lines between what is direct evidence and what is circumstantial evidence and what is McDonnell Douglas scutiny and what is scutiny under some other form of decision. I find those

arguments largely to be an exercise of intellectual curiosity more than helpful to the ultimate resolution of the case.

There is a dispute in this evidence as to whether or not Mr. Ruffin was assigned the more difficult jobs that mechanics were assigned. And there is a dispute in the testimony as to whether any such variation in job assignments might be attributed to Mr. Ruffin's race. While recognizing the difference in the evidence, the dispute in the evidence, I conclude on this issue favorable to the defendant. I conclude that the evidence has not shown that Mr. Ruffin was assigned jobs as a mechanic that were more difficult or more dirty than white mechanics were being assigned.

Much of the evidence has dwelt on particular assignments. It's clear that certain whites have been assigned the same jobs that Mr. Ruffin says were the worst. There are disputes as to whether assignments of whites to those jobs were of the same frequency that Mr.

Ruffin was assigned. At least as to one white employee, the evidence it seems to me is clear that that employee was assigned perhaps even a higher percentage or frequency of those "bad jobs" than was Mr. Ruffin. On that claim, then, I am ruling in favor of the company and against the plaintiff.

The second matter to be addressed relates to the claim of disparate treatment in the imposition of discipline both in terms of oral reprimands and indeed in terms of suspensions. As already indicated, I do not limit my attention to those matters that may have predated within 180 days the filing of the EEOC charge but I look to the variety of those matters as they have come up even to the date of the trial.

There is evidence that some of the matters for which Mr. Ruffin received either a warning or a suspension might, when compared with what some white employees have received in the way of reprimands or

suspensions, be considered as unequal and, hence, discriminatory--at least presumptively discriminatory.

The evidence also indicates on the other side that there are other matters for which Mr. Ruffin may have received only a reprimand or indeed be talked to but not recorded as even a reprimand for which white employees doing much of the same thing have been given even more severe punishments and discipline than has Mr. Ruffin. Indeed the evidence indicates that the company's dissatisfaction with Mr. Ruffin's performance and certain aspects of his work, particularly in slow production, has with respect to white employees or at least to two of those, resulted in their discharge, whereas at most, in Mr. Ruffin's case it has resulted in a suspension. I say the same thing with respect to certain violations of safety rules. I find in favor of the company on that claim as to the discipline. I find that Mr. Ruffin has not been

disciplined in a way disparate from whites as it relates to his race.

The more difficult issues before the Court are the last two. Those are ones dealing with pay and the consequential effect of pay raises that would have resulted in his classification as an A-mechanic rather than a B-mechanic, and the issues relating to the use within this workplace of racial slurs and jokes and incidents that certainly could be treated and viewed as offensive to black persons. These two matters are somewhat related as I will indicate in these findings.

The policy of this company is that pay increases to the mechanics, who generally number about fifteen at any particular time, are ordinarily handled by considering at roughly six month intervals the potential increase in hourly rates of individuals. On a few occasions, the company has granted the equivalent of a general increase to all employees by simply giving a one time payment in lieu of

individual hourly increases and has treated that one time payment as simply replacing any possible raises for that period of time, and as to those matters it appears that Mr. Ruffin has shared with the white mechanics in those payments.

As it relates, however, to the essentially semi-annual consideration of raises, it is clear that the company has made those decisions on an individual-by-individual basis, considering the mechanics, their work performance, their productivity, any problems with discipline and indeed their rates of pay in comparison with other mechanics given their apparent abilities, demonstrated particularly during the preceding six months. Typically, these raises to individuals have not exceeded twenty-five cents per hour and the persons to whom the raises have been given have not always received the full twenty-five cents per hour. The company has from time to time given smaller hourly increases.

There are four particular increases that the Court looks at particularly during this lawsuit. One is increases that were give in October or November of 1987. Mr. Ruffin did not receive any increase at that time in his hourly rate. There is next the increase that was given to some employees in March of 1988 approximately a month before the filing of Mr. Ruffin's charge. Mr. Ruffin did not receive any pay increase at that time. Two subsequent hourly increases were given mechanics. Mr. Ruffin did receive hourly increases during those latter two times, one in the amount of fifteen cents per hour and one in the amount of twenty cents per hour. These were not as high as some employees but they were not, at the same time, the lowest, as I recall.

The manner by which the company made the determinations about pay increases was that the branch manager of the defendant, in conjunction with the service manager, would review the status of the mechanic. One

of the things that would be considered in that connection would be certain ratings or what was referred to here as "flex" or "flexibility charts" that had been prepared with respect to each of the mechanics by the service manager or the shop foreman and the two lead men. These appraisals averaged, would attempt to assess, particularly within the preceding six months how the various mechanics were doing in terms of various job skills, particular types of welding, particular functions that people had to perform in grading the individuals with respect to whether they were untrainable subject to being trained, good or satisfactory or indeed skilled. In addition to those attributes, attempted to be rated in this manner, there would be an assessment of a person's attitude during the preceding six months and attendance record during the preceding six months.

These flex charts would be considered by the two individuals making the decision about pay raises. They

were not the only thing to be considered and indeed as the Court attempted to compare those flex ratings with what happened in the way of actual granting of raises, it's apparent that the flex ratings certainly have no high correlation to the actual raises given but at most had some influence on those.

The branch manager and service manager in making these semi-annual decisions on raises would also consider their views of the various employee's productivity, safety matters, disciplinary record during the preceding six months' period of time and how the person's pay compared with other employees, particularly those who were reflecting the same level of skill.

Obviously a system like this creates a substantial opportunity for persons with racial biases to let those biases be reflected in the increases being given. There is no evidence to indicate that either of the two individuals involved in making those decisions, either Mr. Aycock, the

branch manager, or Mr. Woods, the service manager, were themselves infected with any kind of racial bias that would perhaps affect their decisions on pay raises.

However, one of the elements or items being considered by them were these flex charts and one of the four individuals involved in preparing the flex charts was a lead man, Mr. Webb, about whom there is evidence to certainly indicate a likelihood of racial bias or prejudice.

There is some evidence to indicate that a second of the people involved in making those flex charts ratings, Mr. Willoughby, who was a shop foreman, had or may have had racial bias. I reject the plaintiff's evidence as to evidence of Mr. Willoughby's racial bias and do not find the evidence to support any such determination or conclusion.

It does leave me with the point that one of the four individuals involved in making the flex ratings was at least potentially subject to racial bias and prejudices that could

have affected those ratings. Indeed as I've looked through the flex ratings and with particular emphasis to those given by Mr. Webb, at least I believe it's the latter two as to which I had the information, indicate an unusually low rating of Mr. Ruffin by Mr. Webb.

At the same time, the ratings give to Mr. Ruffin by the other three, as to whom I find no racial bias, also indicate a lower rating for Mr. Ruffin than might otherwise have been suspected in the light of his experience of, at that time, ten to eleven years. The evidence indicates that during this period of time, Mr. Ruffin was having, periodically, difficulties in production, in being slow in getting work out. This is not to say that all mechanics do not, from time to time, have jobs assigned to them where they take more time than the goal in terms of hours that were prescribed at the time the job was taken on or assigned.

The evidence indicates a repeated problem, however, with Mr. Ruffin beyond simply the one or two incidents of his having exceeded a goal as set at the time of a job assignment. The records of the service manager reflecting the admonitions to Mr. Ruffin concerning his lack of productivity, not attending to the work, at times not being prompt in reporting to the job to begin promptly to work, reflect, as the company has here described it, a roller coaster effect in Mr. Ruffin's job performance. Namely the company's position is that, although Mr. Ruffin has the various skills to be able to do this work and can do it, he frequently has not done it.

The evidence reflects problems with Mr. Ruffin's attendance. Here again, this is not to say that other employees and white employees have not had attendance problems as well. One of the interesting things about this case is that the company has been able to demonstrate that it has taken more severe disciplinary action with

respect to certain white individuals than it has with Mr. Ruffin as it relates to essentially the same problems.

I put aside for the moment this discussion about pay. I do note, however, that the two times in which Mr. Ruffin did not receive a pay increase, the fall of 1987 and the spring of 1988 occasions, although he did not receive a pay increase neither did most white employees. The evidence indicates that the fall of 1987 pay increase, there were pay increases given to only three of the fifteen mechanics. The evidence indicates that in the spring 1988 pay increases, there were increases given to only two of the fifteen mechanics. So that the failure in this respect of Mr. Ruffin to receive an increase has to also be considered in light of the fact that most white employees did not receive an increase either. I leave this matter for the moment to discuss the work environment.

The evidence indicates that in the shop, the various mechanics, most of whom were white, engaged on a

regular basis in making racially tainted jokes, slurs and epithets. They at times would refer to Mr. Ruffin and other black employees in a derogatory and offensive way. There were matters of horseplay that went on. Not all blacks necessarily were offended by those but at least Mr. Ruffin was and there certainly was a basis for his being offended by those.

Mr. Ruffin also took offense at his being referred to on a fairly regular basis as "Rondo". There is nothing in that term that has a racial connotation to it. It apparently was used in light of Mr. Ruffin's name being Ron or Ronald and in light of the fact that the service manager's name also was Ron or Ronnie, and somehow the coin of the nickname of "Rondo" to refer to Mr. Ruffin, at least that would appear to have been perhaps the initial foundation for it. At the same time, at least at some point, Mr. Ruffin no longer liked being referred to as Rondo, didn't understand the term perhaps,

and made an inquiry about it and was told it meant "dumb ass". Well, even so, though it may have been offensive, that has no racial connotations to it, unless one also assumes that a person making that comment is saying that black people more than white people could be dumb asses. There's nothing to suggest that.

At the same time, certainly the Court must be sensitive to the fact that given the historical basis of black people frequently being referred to either by first names when others were not or by being called "boy" when others were not called in that way, that there is more reason for a black person to be offended by the use of a nickname than perhaps a white person might under similar circumstances. Mr. Ruffin did make it known that the didn't like being called "Rondo". As it relates to that particular matter, the company made no effort to see that the co-workers, the mechanics, ceased using a term that

Mr. Ruffin didn't like although it, in and of itself, has no racial overtones.

There is an incident that occurred in or around the close of the year 1987 certainly as to which this Court would be concerned and is concerned. An incident in which a noose was prepared using heavy rope by white mechanics and ultimately the noose was put around Mr. Ruffin's neck by one of these white mechanics. These are co-workers and not supervisors.

Mr. Ruffin made a complaint to management about what had occurred and management did immediately make an inquiry investigation into it. Management got conflicting stories with the whites who were involved having indicated that, number one, it had not originally been prepared in any way as something directed to Mr. Ruffin and that in any event it was a matter simply of a joke and no offense taken in the eyes of the whites and that Mr. Ruffin, himself, had engaged in some horseplay

or joking use of the noose at the same time. Mr. Ruffin's version, of course, was different as to what happened and it has been different in this trial.

Management, confronted with the two different stories, without making a decision as to which story or which version to believe, said that certainly an apology was due to Mr. Ruffin from the whites who were involved and indeed that apology was given. So far as management was aware, that had satisfied Mr. Ruffin. Obviously it did not satisfy him, but at least in terms of responding later to management, he did not indicate that he was still unhappy with what had occurred or what action management had taken or failed to take of a more severe nature.

Since that incident in late 1987 it's clear to the Court that management has taken a more active role in reducing the amount of offensive language and joking that had been going on prior to that time. It's also clear that the action that management has taken from time to time

in terms of correcting individuals who might be involved in using racial slurs or names or jokes has not totally stopped that kind of activity from going on within the workplaces among co-workers.

Management has taken disciplinary action since that time with respect to individuals, where it was reported to management, that these things had occurred. It is not unexpected that these matters have gone on periodically and have not been reported to management persons.

It is very difficult, obviously, for management to directly address matters when it's not reported, where they have no knowledge of it, and it is clear to the Court based on the evidence presented that management does view that as inappropriate behavior and is prepared to impose appropriate discipline when called to its attention.

I digressed to this area because one of the aspects that is most difficult for the Court to deal with here is that a determination as to whether this racially hostile

environment that would periodically be there when Mr. Ruffin was working contributed to or caused the inadequacies in performance which in turn have resulted in the failure to get pay increases. To the extent the work environment is sufficiently hostile so that an individual is adversely affected in job performance by his response to it and that's a reasonable response, not an unduly sensitive response, then, as I view it, that becomes an act of discrimination that can carry over into decisions that flow from it, for example, in the decision about pay increases.

So, that is where the Court's struggle is in this particular case. I've heard, of course, from other black employees or former employees and the mere fact that some of them may take greater offense or lesser offense at these same activities is not controlling on the Court but it is helpful in trying to assess the extent to which these matters that were going on among co-workers constituted such a pervasive environment that it could reasonably be

expected to have caused inadequate job performance which, in turn, could flow over into the area of pay increases.

I do conclude that there were sporadic instances of slurs, jokes, going on during the critical time period that we're looking at from late 1987 forward. I do conclude that that constituted a violation of the plaintiff's rights under Title VII and that although the company was not aware of all of those matters, it did become aware of enough of them that some affirmative and effective corrective action was appropriate and was required of the company. It has taken some action. But during that period of time Mr. Ruffin was exposed to those matters and having to work under those conditions, the question is how substantial and severe were they and to what degree as it relates to Mr. Ruffin did that actually cause the problems he was having which led to his poor or relatively poor job performance? My conclusion is that

though Mr. Ruffin was justifiably and understandably upset and offended from time to time by the work of some of these co-workers, that was not the basis or reason for the inadequacies in job performance that led to his not having received the pay increases in the fall of '87 or the spring of '88.

I go back and I note that only three of approximately fifteen mechanics got pay raises in the fall of '87, only two of fifteen got pay raises in the spring of '88. Their "inadequacies of performance" that were essentially similar to those, in many respects, of Mr. Ruffin, were not for them in any way the result of racially offensive environment. And from hearing from other black employees in trying to assess as best I can what was the real impact in the ability to perform work, I don't believe that the offensive conduct that was going on among co-workers was the cause of the inadequacies of job performance that Mr. Ruffin was experiencing at that

time. I am going to reject Mr. Ruffin's claim that lack of pay increases with the consequent lack of promotion from B-mechanic to A was racially motivated or came from or is attributed to anything racially.

I have found and do find that the company did not provide a sufficiently racially neutral environment for Mr. Ruffin and other blacks to perform their work in, that I declare, as a declaratory judgment, that Mr. Ruffin's rights were violated back during that period of time. The company has taken some action since late 1987 to correct that and it's certainly made it clear to the co-employees that it does not tolerate that and does not view that type of conduct as permissible. It's also true that given the extent to which that had been going on for such a number of years, that it has been ineffective in really correcting adequately that situation.

I am going to enjoin the company to take active steps to reduce and eliminate the racial joking and slurs

and episodes in the shop area. The wording of an injunction of this sort is very difficult. And it is, as I say, clear to me that the company has attempted or started in that area, has undertaken from time to time disciplinary action. But I think the Court is essentially requiring now, given this evidence, the company to be more affirmative and more aggressive in its efforts to correct that situation, that environment in the shop. Only in that respect is the Court granting relief to the plaintiff. While important, it is not really a central aspect of what has been the claim presented by the plaintiff.

The plaintiff, I'm sure must feel like he has lost in the case. I think it is fair to say in general he has lost in this case even though the Court does find on this area an entitlement to relief.

In my view, each side--or the costs should be taxed against the defendant but in my view the plaintiff is not entitled to attorney's fees in this case having won on no

central or major or significant issue being presented. The result, then, is a decision that will enjoin the company to take affirmative action to prevent the existence of conditions within the shop that are racially offensive.

The costs of the action will be taxed against the company but those costs will not include attorney's fees. I'm sure that neither side agrees with the Court's conclusions or findings. And there are some areas that I have not touched on. The matters are still clear in my mind and if counsel believe I have failed to cover a subject matter that I should have covered and perhaps could do so while the evidence still is clear in mind, I would appreciate your advice on something that I've overlooked. If you think I made a misstatement that perhaps I would want to correct, I would also like to be told that. Again, I'm not asking for any waiver of the right for post judgment motions. Does plaintiff know of anything that perhaps I should deal with?

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division
Case No. CV 89-P-1951-S

RONALD RUFFIN,)
)
Plaintiff;)
)
-vs.-)
)
GREAT DANE TRAILERS, INC.,)
)
Defendant.)

JUDGMENT

Pursuant to the findings of fact and conclusions of law dictated into the record, it is hereby ORDERED that defendant, Great Dane Trailers, Inc., be hereby enjoined to take appropriate steps to create a work environment at its shop in Birmingham, Alabama, that will not be racially offensive to its black employees, and more particularly that the defendant, Great Dane Trailers, Inc., take appropriate steps to assure that its employees at such job site cease using racial slurs, epithets, slang, and jokes that

might be reasonably expected to be offensive to its black employees. In other respects, the claims of the plaintiff are DENIED.

Costs, but not including attorneys' fees, are taxed against the defendant.

This the 19th day of April, 1991.

/s/ Sam C. Pointer
United States District Judge

Ronald RUFFIN, Plaintiff-Appellant,

v.

GREAT DANE TRAILERS,
Defendant-Appellee.

No. 91-7423.

United States Court of Appeals,
Eleventh Circuit.

Aug. 20, 1992.

Appeal from the United States District Court for the Northern District of Alabama.

Before KRAVITCH, Circuit Judge, CLARK*, Senior Circuit Judge, and PITTMAN**, Senior District Judge.

KRAVITCH, Circuit Judge:

---

* See Rule 34-2(b), Rules of the U.S. Court of Appeals for the Eleventh Circuit.

** Honorable Virgil Pittman, Senior U.S. District Judge for the Southern District of Alabama, sitting by designation.

Plaintiff-appellant Ronald Ruffin appeals the district court's denial of plaintiff's request for attorney's fees. Ruffin sued his employer, defendant-appellee Great Dane Trailers ("Great Dane"), seeking damages and injunctive relief for violations of Title VII. The district court found in favor of the defendant on plaintiff's claims for damages, but held in favor of the plaintiff on his claim for injunctive relief, ordering the defendant to take appropriate steps to make its Birmingham, Alabama shop a racially neutral workplace. The district court denied plaintiff's request for attorney's fees on the ground that he had failed to prevail on any significant issue in the litigation. Plaintiff appeals the district court's decision not to award plaintiff attorney's fees. We reverse and remand to the district court.

I. BACKGROUND AND COURSE OF PROCEEDINGS

Ruffin was employed at Great Dane's Birmingham, Alabama shop as a Class B mechanic. On November 15, 1989, Ruffin sued Great Dane for violations of Title VII, claiming discrimination on account of race. Specifically, Ruffin alleged the following violations: (1) that Great Dane had failed to promote Ruffin to the position of Class A mechanic on account of race; (2) that Great Dane had discriminated against Ruffin in terms of job assignments, giving him more difficult and less attractive work than white mechanics received; (3) that Great Dane had disciplined Ruffin differently than it disciplined white workers; and (4) that Ruffin had been subjected to a racially hostile work environment.

Ruffin sought the following relief: (1) a declaratory judgment that Great Dane's employment policies and practices violated Title VII; (2) a permanent injunction

ordering Great Dane to cease violating Title VII; and (3) "an Order requiring the defendant to make the plaintiff whole by awarding him the position he would have occupied in the absence of race discrimination, compensatory damages, lost seniority, benefits, and loss of pension."

This case was tried before the United States District Court for the Northern District of Alabama on April 15-16, 1991. At the end of the trial, the court read its findings of fact and conclusions of law into the record, analyzing separately each of the four components of Ruffin's Title VII claim.

The court ruled in favor of the defendant on the first three components of Ruffin's claim. The court held that Ruffin's work performance justified both the failure of the company to promote him to a Class A mechanic and the disciplinary measures taken by the company against Ruffin. The district court also found to be without

merit Ruffin's allegations that he was treated unfairly in terms of work assignments.

With respect to Ruffin's claim of a racially hostile work environment, the court made two determinations. First, the court rejected plaintiff's contention that Great Dane's allegedly racially offensive work environment adversely affected Ruffin's work performance and had therefore caused the above-mentioned deficiencies in Ruffin's performance that resulted in his failure to gain advancement in the company. Second, however, the court found that "the company did not provide a sufficiently racially neutral environment for Mr. Ruffin and other blacks to perform their work in." The court found that "in the shop the various mechanics, most of whom were white, engaged on a regular basis in making racially tainted jokes, slurs and epithets." In making this determination, the court pointed in particular to one 1987 incident, highlighted by the plaintiff at trial, in which Ruffin's co-

workers had placed around his neck a hangman's noose made out of thick rope and had stated that they intended to "hang us a nigger." The court recognized that Great Dane had taken some action since 1987 to correct such problems, but also recognized that "given the extent to which [the offensive behavior] had been going on for such a number of years, . . . [Great Dane] has been ineffective in really correcting adequately the situation."

The court therefore (1) issued a declaratory judgment that Ruffin's rights had been violated by virtue of the behavior at the Great Dane shop, and (2) issued an injunction requiring Great Dane to "take active steps to reduce and eliminate the racial joking and slurs and episodes in the shop area." In explaining its injunction, the court noted that it was "essentially requiring . . . the company to be more affirmative and more aggressive in its efforts to correct that situation, that environment in the shop."

The court taxed costs against the defendant, but held that the plaintiff was not entitled to attorney's fees under 42 U.S.C. § 1988, the civil rights attorney's fees statute, because he had not prevailed on any "central or major or significant issue." In its earlier discussion of the injunction issue, the court had indicated that "[w]hile [the district court's ruling on the injunction issue is] important, it is not really a central aspect of what has been the claim presented by the plaintiff."

Ruffin appeals the district court's determination that he is not entitled to attorney's fees under 42 U.S.C. § 1988.

II. STANDARD OF REVIEW

[1] We review a district court's determination that a civil rights plaintiff is not entitled to attorney's fees for abuse of discretion. Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S.Ct. 1933, 1941, 76 L.Ed.2d 40 (1983);

Taylor v. City of Fort Lauderdale, 810 F.2d 1551, 1556 (11th Cir. 1987).

III. ANALYSIS

A. The "Prevailing Party" Standard

42 U.S.C. § 1988 states, in relevant part: "In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." Thus, the question in this case is whether Ruffin was a prevailing party under 42 U.S.C. § 1988.

[2] The parties agree that the Supreme Court's decision in Texas State Teacher's Ass'n v. Garland Independent School District, 489 U.S. 782, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989), is controlling on the "prevailing

party" issue. In Garland, the Court resolved a conflict between the circuits as to the proper standard for determining whether a civil rights plaintiff was a prevailing party, rejecting the Fifth and Eleventh Circuits' "central issue" test in favor of a more lenient standard.[1] The Garland Court held that "[i]f a civil rights plaintiff has succeeded on 'any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing suit,' the plaintiff has crossed the threshold to a fee award of some kind." Garland, 489 U.S. at 791-92, 109 S.Ct. at 1493 (quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-79 (1st Cir. 1978).) The Court further held:

> [w]here the plaintiff's success on a legal claim can be characterized as purely

---

[1]Prior to Garland, the Fifth and Eleventh circuits had required a civil rights plaintiff to succeed on the "central issue" in the litigation and achieve the "primary relief sought" to be eligible for an award of attorney's fees under 42 U.S.C. § 1988. Simien v. San Antonio, 809 F.2d 255, 258 (5th Cir. 1987); Martin v. Heckler, 773 F.2d 1145, 1149 (11th Cir. 1985) (en banc).

> technical or de minimis, a district court would be justified in concluding that even the "generous formulation" we adopt today has not been satisfied. [Citations omitted]. The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute. Where such a change has occurred, the degree of the plaintiff's overall success goes to the reasonableness of the award under Hensley [v. Eckerhart, supra], not to the availability of a fee award vel non.

Id. at 792-93, 109 S.Ct. at 1493.

Appellant claims that because the district court's injunction materially altered the legal relationship between himself and Great Dane, he has satisfied the Garland test and has prevailed on a significant issue in the litigation that achieved some of the benefits he sought in bringing suit.[2] Appellee contends, conversely, that Ruffin did not

---

[2]Specifically, Ruffin argues that the district court erred by applying the "central issue" test rejected in Garland. The court did state that plaintiff "won on no central or major or significant issue being presented," and that (continued...)

satisfy the Garland standard for several reasons: first, appellee notes that Ruffin received none of the financial benefits he sought from bringing his lawsuit, such as a promotion or back pay; second, appellee argues that the court did not order Great Dane to initiate any further action with respect to the specific incidents of racial harassment out of which Ruffin's lawsuit arose; third, Great Dane contends that, given the district court's finding that Great Dane had take some steps to eliminate the offensive racial atmosphere in its Birmingham shop, the court's injunction merely directed the appellee to "do

---

[2](...continued)
Ruffin's claim for injunctive relief "[was] not really a central aspect of plaintiff's claim," thereby arguably implicating the discredited "central issue" test. We believe, however, that the court's language, taken as a whole, reveals that the district court looked to see whether the plaintiff prevailed on any significant issue in the litigation, thereby applying the correct legal standard. The question remains, however, whether the court incorrectly applied that standard, and abused it discretion by concluding that Ruffin was not entitled to attorney's fees.

more of what the evidence established [it] had already done in the past." Ultimately, argues Great Dane, Ruffin achieved no more than a "technical victory" in district court, and lost on "every significant claim presented to the court."

We disagree with the appellee, and hold that the district court abused its discretion in determining that Ruffin was not a prevailing party under 42 U.S.C. § 1988 and Garland, supra.

B. The Right

[3, 4] The district court's findings/conclusions make clear that the defendant violated the plaintiff's civil rights by not providing a sufficiently racially neutral work environment for Ruffin and other blacks at Great Dane, and by failing to take "some affirmative and effective corrective action" in light of the racially offensive environment at the Great Dane shop. Although it is true

that a mere determination that a civil rights plaintiff's rights have been violated does not per se make the plaintiff a prevailing party for purposes of 42 U.S.C. § 1988, see Rhodes v. Stewart, 488 U.S. 1, 4, 109 S.Ct. 202, 203, 102 L.Ed.2d. 1 (1988); Hewitt v. Helms, 482 U.S. 755, 762, 107 S.Ct. 2672, 2676, 96 L.Ed.2d 654 (1987); Walker v. Anderson Electrical Connectors, 944 F.2d 841, 846-47 (11th Cir. 1991), pet. for cert. filed, 60 U.S.L.W. 3862 (May 8, 1992), the district court's ruling in this case provided Ruffin with more than a bare declaration that his rights had been violated.

C. The Remedy

[5] In an attempt to preclude future violations of Ruffin's rights, the court in this case fashioned affirmative injunctive relief, mandating that Great Dane take affirmative steps to improve its response to worksite racism. The court's decision to issue the injunction arose

out of its recognition that although Great Dane had since 1987 taken some corrective action to redress the racism suffered by Ruffin, "the action management has taken from time to time in terms of correcting individuals who might be involved in using racial slurs or names or jokes has not totally stopped that kind of activity from going on within the workplaces among co-workers." Thus, because of what it perceived to be a less-than-full commitment on the part of Great Dane to eradicate the racial taunts and comments that permeated the appellee's shop, the court saw fit to use its injunctive powers to require Great Dane to be more aggressive in providing black workers with a racially neutral work environment. Ruffin clearly sought such injunctive relief in his complaint.

The district court's judgment undoubtedly affected the behavior of Great Dane toward the defendant, and altered the legal relationship between Ruffin and his employer. By virtue of the court's grant of injunctive

relief, Great Dane is now under a legal obligation to correct the racist behavior at its jobsite. Accordingly, Ruffin may now protect his rights through a civil contempt proceeding in the event that Great Dane's compliance with the court's injunction is not forthcoming. See Mercer v. Mitchell, 908 F.2d 763, 768 (11th Cir. 1990). Given the alteration of Ruffin's legal rights and Great Dane's legal obligations that resulted from the court's grant of injunctive relief, there is no question that Ruffin prevailed on this issue before the district court, or that, consequently, he satisfied the Garland standard and is entitled to an award of attorney's fees.

D. The Incompleteness of the Remedy

[6] That Ruffin only partially prevailed in his suit against Great Dane in no way precludes him from receiving attorney's fees in this case. Indeed, the very import of Garland is that a plaintiff need only prevail on

one significant issue to qualify as a prevailing party under 42 U.S.C. § 1988. Garland, 489 U.S. at 789, 109 S.Ct. at 1492. A plaintiff may be said to have prevailed if the relief granted altered his or her legal relationship with the defendant. Our discussion in Section II.C, supra, reveals that the relief afforded Ruffin materially altered his relationship with Great Dane. Thus, the fact that Ruffin obtained relief on no other issue is irrelevant.[3]

---

[3]Both parties analogize this case to one in which the plaintiff received nominal damages and nothing else out of his or her civil rights action. Several circuits, including this one, have held that an award of nominal damages, without more, suffices as a basis for an award of attorney's fees under 42 U.S.C. § 1988. Garner v. Wal-Mart Stores, Inc., 807 F.2d 1536, 1539-40 (11th Cir. 1987); Scofield v. City of Hillsborough, 862 F.2d 759, 766 (9th Cir. 1988); Ruggiero v. Krzeminski, 928 F.2d 558, 564 (2d Cir. 1991); Allen v. Higgins, 902 F.2d 682, 684 (8th Cir. 1990). The Fifth Circuit, however, has held that an award of nominal damages, without more, represents the kind of technical, de minimis victory that the Supreme Court in Garland, Hewitt and Rhodes held should not furnish a basis for attorney's fees. Estate of Farrar v. Cain, 941 F.2d 1311, 1313-17 (5th Cir. 1991). The Supreme Court recently granted certiorari in Farrar, ___ U.S. ___, 112 S.Ct.

(continued...)

E. The Prospective Nature of the Remedy

[7] Appellee further argues that because the court did not order Great Dane to initiate any further action with respect to the specific incidents of racial harassment out of which Ruffin's lawsuit arose, such as the 1987 noose incident, the plaintiff was not the prevailing party for purposes of 42 U.S.C. § 1988. This argument implies that the prospective nature of the relief obtained by the plaintiff makes such relief an inadequate predicate for the award of attorney's fees, and, in essence, suggests that as a general matter injunctive relief, which is by its

---

[3](...continued)
1159, 117 L.Ed.2d 407 (1992), and will presumably resolve this issue in the near future. In any event, this case is different in kind from cases involving nominal damages insofar as the district court's action in this case materially altered the legal relationship between Ruffin and Great Dane in a way that an award of nominal damages does not. See Section II.C, supra. Therefore, regardless of whether or not the Supreme Court ultimately holds nominal damages to provide a sufficient predicate for an attorney's fees award under 42 U.S.C. § 1988, the district court erred in denying Ruffin attorney's fees in this case.

very nature prospective, could not provide an adequate basis for an attorney's fees award under 42 U.S.C. § 1988.

Appellee's contention, of course, is patently wrong. In Crowder v. Housing Authority of the City of Atlanta, 908 F.2d 843 (11th Cir. 1990), for example, this court approved an award of attorney's fees to a group of senior citizens who had successfully sought an injunction that would allow them to hold Bible study meetings and to post notices of such meetings in their public housing complex. The court issued the requested injunction, which "put into place specific detailed procedures that guaranteed the plaintiffs access to meeting space and bulletin board access." Crowder, 908 F.2d at 849.

[8] Although the relief in this case does not reach the level of specificity reached by the injunction issued in Crowder, in both cases the court used its injunctive powers to address situations which had previously resulted in violations of the plaintiffs' rights,

and to mandate the implementation of procedures that would ensure against the recurrence of such violations. The fact that, as in Crowder, specific instances of misconduct by the defendants were not addressed by the court's injunction is of no moment.[4] Where, as here, injunctive relief is requested by a plaintiff and granted by the district court, the accompanying failure of the court to provide retrospective relief in the form of compensatory damages does not negate the court's use of its authority to mandate Great Dane's increased attention and improved responses to jobsite racism, and to provide Ruffin with a remedy in the event increased vigilance is not forthcoming. See also, Sanchez v. City of Miami Beach, 720 F.Supp. 974 (S.D.Fla. 1989) (Title VII plaintiff entitled to attorney's

---

[4]It should be noted that the plaintiffs in Crowder, like Ruffin, unsuccessfully sought monetary damages for the defendant's violation of their rights.

fees after having been granted injunctive relief on her claims of sexual harassment).

F. The Need For a Remedy

Finally, appellee suggests that because the district court found that Great Dane had taken some corrective action to improve the racial situation at Ruffin's jobsite, the court's injunction does not materially alter the existing legal relations between Ruffin and Great Dane, and therefore cannot serve as the basis for an award of attorney's fees. This argument is also without merit.

[9] An injunction is inappropriate if the possibility of future harm to the plaintiff arising out of the behavior plaintiff seeks to enjoin is purely speculative. Lopez v. Garriga, 917 F.2d 63, 67 (1st Cir. 1990). The district court saw fit to issue an injunction against Great Dane because Great Dane had failed to correct adequately the situation which led to violations of Ruffin's

rights. The court's decision to issue its injunction reflected its belief that the possibility of future violations of plaintiff's rights--and the rights of other blacks employed by Great Dane--existed, and served to ensure the lack of recurring violations.

Appellee does not challenge the award of injunctive relief, nor does it suggest that the court's finding that Great Dane has failed to address adequately the problem of jobsite racism is clearly erroneous. Given the district court's unchallenged findings, we cannot hold that the court's injunction did not materially alter the relationship between Ruffin and Great Dane because Great Dane had already acted to effectuate this changing relationship. To do so would strip the district court's action of any meaning whatsoever, and would negate the court's determination that Great Dane had not adequately corrected the situation that resulted in a violation of Ruffin's rights.

IV. CONCLUSION

For the foregoing reasons, we conclude that the district court abused its discretion in determining that Ruffin was not a prevailing party under 42 U.S.C. § 1988. Accordingly, we REVERSE and REMAND this case to the district court with instructions to hold an evidentiary hearing on plaintiffs' entitlement to attorney's fees.

STATUTORY PROVISIONS

42 U.S.C. §2000e-2. Unlawful employment practices

[Sec. 703](a) It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national original; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such

individual's race, color, religion, sex, or national origin. . .

42 U.S.C. § 2000e-5(k). Enforcement provisions

In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

42 U.S.C. §1988. Proceedings in vindication of civil rights; attorney's fees

. . . In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 U.S.C. §§ 1981-83, 1985, 1986], title IX of

Public Law 92-318 [20 U.S.C. §§ 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. §§2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Supreme Court, U.S.
FILED
JAN 13 1993
OFFICE OF THE CLERK

No. 92-824

In The

Supreme Court Of The United States

OCTOBER TERM, 1992

GREAT DANE TRAILERS, INC.,
Petitioner,

v.

RONALD RUFFIN,
Respondent.

ON A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

Richard J. Ebbinghouse
GORDON, SILBERMAN,
WIGGINS & CHILDS, P.C.
1400 SouthTrust Tower
Birmingham, Alabama 35203
(205) 328-0640

Counsel for Respondent

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. When the plaintiff is found to be the victim of a racially hostile work environment in violation of Title VII and the defendant is enjoined to correct that hostile environment, has the plaintiff prevailed for purposes of attorney's fees and expenses?

2. Where the plaintiff reverses the district court's holding that he was not a prevailing party under 42 U.S.C. § 1988 and the case is remanded for a hearing on the issue of fees to the district court, does *Farrar v. Hobby*, 61 USLW 4033 (1992) require a different outcome?

LIST OF PARTIESS

The parties to this case in the Courtrt of Appeals were as follows:

Ronald Ruffin

Great Dane Trailers, Inc.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES iiv

COURSE OF PROCEEDINGS 1

A. STATEMENT OF THE CASE 1

B. STATEMENT OF THE FACTS 2

ARGUMENT 7

I. PLAINTIFF WAS A PREVAILING PARTY UNDER THE STANDARD IN *GARLAND* 7

II. PLAINTIFFS WHO OBTAIN INJUNCTIVE RELIEF ARE ENTITLED TO FEES AND EXPENSES UNDER 42 USC SECTION 1988 9

III. INJUNCTIVE RELIEF IS NOT NOMINAL RELIEF, BUT RATHER SERVES THE REMEDIAL PURPOSES OF TITLE VII. 15

IV. THE ELEVENTH CIRCUIT OPINION IS CONSISTENT WITH THE HOLDING IN *FARRAR* 17

V. A PUBLIC PURPOSE IS SERVED BY ENJOINING RACIAL HARASSMENT 18

CONCLUSION 22

CERTIFICATE OF SERVICE 23

TABLE OF AUTHORITIES

PAGES:

Albemarle Paper Co. v. Moody,
422 U.S. 405, 415, 95 S.Ct. 2362, 2370,
45 L.Ed.2d 280 (1975) 9, 10, 15, 16

Bundy v. Jackson,
641 F.2d 934, 946 n.12 (D.C. Cir. 1981) 15, 18

Carey v. Piphus,
435 U.S. 247, 98 S.Ct. 1042,
55 L.Ed.2d 252 (1978) 19

Christopher P. v. Marcus,
915 F.2d 794 (2nd Cir. 1990) 22

City of Riverside v. Rivera,
477 U.S. 561, 574, 106 S.Ct. 2686, 2694,
91 L.Ed.2d 466 (1986) 19

Dunn v. State of Florida,
889 F.2d 1010, 1013 (11th Cir. 1989) 11

Farrar v. Hobby, 61 LW 4033 (1992) . i, 17, 18, 20, 22

Griggs v. Duke Power Co., 401 U.S. at
429-430, 91 S.Ct. at 853 15

Hensley v. Eckerhart,
461 U.S. 424, 429, 103 S.Ct. 1933, 1937,
76 L.Ed.2d 40 (1983) 8, 17, 18, 19

Henson v. City of Dundee,
682 F.2d 897, 904 (11th Cir. 1982) 14, 18

Hewitt v. Helms,
482 U.S. 755, 766, 107 S.Ct. 2672,
2676, 96 L.Ed.2d 654 (1987) 11, 21-22

James v. Stockham Valves & Fittings Co.,
559 F.2d 310, 354 (5th Cir. 1977), *cert. denied*,
434 U.S. 1034 (1978) 21

Maher v. Gagne,
448 U.S. 122, 129, 100 S.Ct. 2570, 2575,
65 L.Ed.2d 653 (1980) 11

Meritor Savings Bank v. Vinson,
417 U.S. 57, 106 S.Ct. 2399, 2404-05,
91 L.Ed. 49 (1986) 15, 18

Newman v. Piggie Park Enterprises, Inc.,
390 U.S. 400, 402, 88 S.Ct. 964, 965 (1968) 10, 21

Patterson v. McLean Trucking,
109 S.Ct. 2363 (1989) 9

Robinson v. Kimbrough,
652 F.2d 458, 465 (5th Cir. 1980) 11

Ross v. Double Diamond, Inc.,
672 F. Supp. 261, 278 (N.D. Tex.) 19

Ruffin v. Great Dane Trailers,
969 F.2d 989 (11th Cir. 1992) ..... i, 2, 11-12, 21

Sanchez v. City of Miami Beach,
720 F. Supp. 974, 983 (S.D. Fla. 1989) 10

Slade v. United States Postal Service,
952 F.2d 357 (10th Cir. 1991) 22

Texas State Teachers v. Garland Ind. Sch. District,
109 S.Ct. 1486, 1489 (1989) 2, 7, 8, 15, 22

Weaver v. Casa Gallardo, Inc.,
922 F.2d 1515 (11th Cir. 1991) 9

STATUTES

42 U.S.C. § 1988 i

Title VII of the Civil Rights Act of Congress known as the "Civil Rights Act of 1964," as amended, 42 U.S.C. Section 2000e et seq. ..... passim

No. 92-824

In The

Supreme Court Of The United States

OCTOBER TERM, 1992

GREAT DANE TRAILERS, INC.,
Petitioner,

v.

RONALD RUFFIN,
Respondent.

ON A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

OPINIONS BELOW:

The Eleventh Circuit Opinion is reported *Ruffin v. Great Dane Trailers*, 969 F.2d 989 (11th Cir. 1992). The district court's denial of attorney's fees and expenses which was reversed by the Eleventh Circuit is found in Appendix A-35 - A-36. The district court's findings of fact and conclusions of law dictated into the record are found at Appendix A-8 - A-34.

STATEMENT OF THE CASE

The Eleventh Circuit reversed the district court's holding that the plaintiff was not a prevailing party under 42 U.S.C. § 1988. After trial of the plaintiff's Title VII claims, the district court had found that the defendant violated Title VII of the Civil Rights Act of 1964 by maintaining a racially hostile work environment. Tr. 411-413. A permanent injunction was entered which ordered the defendant "to take appropriate steps to create a work environment at its shop in Birmingham, Alabama, that will not be racially offensive to its black employees, and more particularly that the defendant take appropriate steps to assure that its employees at such job site cease using racial slurs, epithets, slang, and jokes that might be reasonably expected to be offensive to its black employees". R.1-38; Tr. 413-414. A declaratory judgment was also awarded. Tr. 413.

The district court, however, denied attorneys' fees and expenses because he had "won on no central or major or significant issue being presented". Tr. 414. Besides the challenge to the racially hostile work environment, the plaintiff claimed that the racially hostile work environment constituted the chief basis for challenging the lower pay, work assignments and discipline received as racially discriminatory. Tr. 400-401, 410-411. They were alleged to have been caused by, or closely related to, the racially hostile work environment. Tr. 400-401, 410-411. The trial court agreed that the other claims of racial discrimination had to be decided in the context of the racially hostile work

environment which was found to exist. Tr. 410-411, 398, 401. The trial court found these to be difficult issues, but ultimately ruled against the plaintiff on his three claims regarding pay, discipline and work assignments. Tr. 400-401, 413. As a result, the court held that the plaintiff was not a prevailing party for fee purposes because he prevailed on only one of his four claims. Tr. 414.

The Eleventh Circuit Court of Appeals in reversing the trial court, held that the plaintiff was a prevailing party and that he had achieved more than a bare declaration that his rights had been violated. The plaintiff had clearly sought the injunction that he obtained. *Ruffin v. Great Dane Trailers*, 969 F.2d 989, 993 (11th Cir. 1992). Great Dane pursuant to the injunction was required to be more aggressive in providing black workers with a racially neutral work environment. The Court of Appeals stated that by virtue of the injunction, there had been a change in the legal relationship of the parties, because Great Dane was under a legal obligation to protect Mr. Ruffin from racist behavior on the job and if it did not, was subject to civil contempt proceedings by him. The Court held that under *Texas State Teachers v. Garland Independent School Dist.*, 109 S.Ct. 1486 (1989) the plaintiff was a prevailing party and reversed the district court with instructions to hold an evidentiary hearing on plaintiff's entitlement to fees.

STATEMENT OF THE FACTS

In December, 1987, when Ronald Ruffin, black, opened his toolbox after lunch, he found a hangman's noose there. Tr. at 8. When this occurred, five white workers sitting at the parts counter began grinning and laughing. Tr. at 7-8. One of them at the counter was Roger Harris. Tr. at 8. When Ronald Ruffin brought the hangman's noose to Roger Harris, **Harris took the hangman's noose and put it around Mr. Ruffin's neck and told him that "we would just hang us a nigger"**, referring specifically to Ronald Ruffin. Tr. at 206, 214. Mark Gallups and Roger

Harris had been playing with the hangman's noose. Tr. at 206. The district court found that it was prepared of heavy rope and was put around Mr. Ruffin's neck by the white mechanic. Tr. at 353, 8, 409. Roger Harris, called by the defendant to testify, admitted that prior to the day that he put the hangman's noose around Mr. Ruffin's neck he had in the past used the word "nigger" directed to Mr. Ruffin. Tr. at 215. He had also called Mr. Ruffin a "porch monkey", although he characterized this as "joking". Tr. at 208.

Racial slurs and a racially charged environment were typical at the Birmingham Great Dane facility. Dennis Harris, white, a former mechanic for nine and one half years at Great Dane left about a year and a half before the trial. [1] Tr. at 343. He went to the Keebler Company for an increase in pay and better work. Tr. at 343. He stated it was very common to hear racial remarks at breaks when everybody gathered around the parts counter and had their snacks. Tr. at 352. It was common for a lot of mechanics to make racial statements, including the term "nigger". Tr. at 344. He testified that Roger Harris frequently used the word "nigger" and four other mechanics also used that term. Tr. at 344. The district court found this to be true. It held the various mechanics, most of whom were white, engaged on a regular basis in making racially tainted jokes, slurs and epithets. Tr. at 407.

Dennis Harris stated that many of those statements were said in front of management of Great Dane. Tr. at 344. This included statements made in front of Mike Willoughby, the shop foreman, and also in front of the leadmen, Mark Perry and Will Webb. Tr. at 345. Some of those statements Dennis Harris heard were said

[1] Dennis Harris had good skills according to Ronnie Woods, the service manager, and had always done a good job. Tr. at 267. Ronnie Woods testified that Dennis Harris had no reprimands nor any type of discipline. Tr. at 267. Dennis Harris had no "axes to grind" against the company or reason to alter his testimony.

when Mike Willoughby was sitting as close as next to the people making the statements. Tr. at 345. At no time did Dennis Harris see him take any disciplinary actions for those statements. Tr. at 345. In fact, Mr. Harris had heard Willoughby use the word "nigger" concerning mechanics that worked there. Tr. at 345. This included statements such as "that nigger is taking too much time or he's slow or he don't know what he's doing." Tr. at 345. Some of those comments Willoughby made were referring to Mr. Ruffin. Tr. at 346.

Mr. Ruffin testified that Mike Willoughby had been within hearing when Sam Logan called him a "nigger". Tr. at 100. On one occasion Sam Logan told Mr. Ruffin to "hurry up, nigger" in the presence of Mike Willoughby, shop foreman. Tr. at 11. Mr. Willoughby never took any action aginst Mr. Logan for his racial statement. Tr. at 12. Mr. Logan frequently made racial statements to Mr. Ruffin such as calling him a "nigger", the most recent one occurring three months prior to trial. Tr. at 12, 81. On another occasion approximately two years earlier, Will Webb, a lead man, hit the back of the trailer driven by Mr. Ruffin with a sledgehammer and said "Nigger, I didn't tell you to put it over here." Tr. at 12-13. Mr. Ruffin had reported to Ronnie Woods, the shop foreman, that he was being called names that he considered racial, including "nigger". Tr. at 14. Woods told him that he would look into it. Tr. at 14. The racial slurs and epithets, however, never stopped.

Prior to the hangman's noose being put in his tool box, Mr. Ruffin was assigned to clean out a wrecked trailer. While cleaning out wrecked trailers was a part of the job of a mechanic, this was not any ordinary trailer. He was assigned to clean out a truck of busted watermelons which was full of maggots. Tr. at 15, 17, 224. Given the other racial slurs he had heard, the significance of that particular assignment was not lost on him. Beforehand, either Roger Harris or Mike Willoughby, the shop foreman, said

"that looks like a job for Rondo", meaning Mr. Ruffin. Tr. at 15. Mr. Willoughby was approximately four feet away from Roger Harris. Tr. at 99. When Mr. Ruffin told them that he did not think that was so, they told him to clean it out. Tr. at 16. When Mr. Ruffin reported to Mike Willoughby that the trailer had maggots from busted watermelons and asked for a helper to be assigned to assist him, no one was assigned to help him. Tr. at 17, 99. All of the helpers at that time were white. Tr. at 17.

Management had been on notice that employees were making racial slurs to the black employees. Hosey Abner, a black former employee, testified that Roger Harris, Sam Logan, and David Smith, co-workers, used racial slurs such as "nigger" around Mr. Abner. Tr. at 108-109. These were made by them in front of Willoughby, Will Webb and also Ronnie Woods. Tr. at 110-111. This was before November of 1987. Tr. at 114. Troy Smith, black, testified that he was employed there from January 1990 for six or seven months as a helper. On one occasion Will Webb hit his finger with a hammer that Mr. Smith had gotten for him. He was called "boy" and told that was not the big hammer Webb had wanted him to get. Tr.at 122. Mr. Smith talked to Mr. Webb about using the term "boy" and that if he used the term again Mr. Smith would physically hit him. Tr. at 123, 135. It ended in a physical confrontation with both employees being suspended two and a half days. Tr. at 123, 191.

When Mr. Smith made the statement that he would hit Webb if he continued to use that language with him, Will Webb said, "that's all he needed and I was out of here." Tr. at 123. After that incident, Troy Smith testified that it was not the same at Great Dane. He started being drug tested and harassed by Will Webb. Tr. at 124. Mr. Smith testified that while he was on jobs, he would be sent to help another employee and told not to clock out on the job ticket. Later, he would be called to the office to discuss why he was over the goal hours on the job. Tr. at 129. After the

incident with Will Webb, Ronnie Woods called Mr. Smith into the office and told him that he needed to see a drastic change in his performance. Tr. at 124. Given the circumstances of the situation and the fact that he kept being pulled off of jobs so that he could not learn them, Mr. Smith resigned rather than be fired. Mr. Smith also heard racial slurs while he was there. Roger Harris used the term "black boy" during the course of the day. Tr. at 125. This would be said to him around Mike Willoughby, the shop foreman. Tr. at 125. Since it occurred early in the morning before the shift started, there was no noise that would have made it difficult to hear. Tr. at 137. Mr. Willoughby, however, took no corrective action. Tr. at 125. Billy Eaton and Sam Logan would use the term "nigger." Tr. at 125. Lee Bell also testified that Roger Harris also made a number of jokes that related to blacks and whites which were of a racial nature. Tr. at 204.

Mr. Ruffin described the effect the racial slurs and incidents had on him as a "sort of mental thing." Tr. 42. It made him think a lot about the job and also caused him to sometimes feel like he did not want to go in to work and suffer their abuse. Tr. at 42. When Mr. Ruffin arrived at work in the morning he would sit in his car, because he did not want to hear the jokes that were made. Tr. at 42.

The district court found that Mr. Ruffin was offended by those jokes, slurs and epithets and certainly had a basis for being offended. Tr. at 407. The district court found that the company did not provide a sufficiently racially neutral environment for Mr. Ruffin and other blacks to perform their work. Tr. at 413. It entered a declaratory judgment that Mr. Ruffin's right to work free from a racially hostile environment had been violated. Tr. at 413. The district court also found that the company's efforts had been ineffective to adequately correct the hostile environment.

The district court found that the issue of pay increases and the resulting promotion was related to the use of racial slurs, jokes, and incidents. Tr. at 401. The district court found these to be the more difficult issues before the court. Tr. at 400. It found that an aspect that was most difficult for the court to deal with was whether the racially hostile environment contributed to or caused the inadequacies in performance resulting in a failure to get pay increases. Tr. at 411. The district court, however, ruled against the plaintiff on the pay increase – promotion claim. Tr. at 412. It also ruled against Mr. Ruffin on his disparate discipline and work assignments claims.

The district court entered a declaratory judgment that the defendant had violated Title VII by its hostile racial environment. Tr. at 413. It entered an injunction for the defendant to take appropriate steps so that the work environment was not racially offensive. Tr. at 413-414. However, the district court denied attorneys fees and expenses. Tr. at 413.

ARGUMENT

I. PLAINTIFF WAS A PREVAILING PARTY UNDER THE STANDARD IN *GARLAND*

From the very outset of the plaintiff's complaint that he was subjected to a racially hostile work environment, Great Dane denied the existence of a racially hostile environment. "Defendant denies that Plaintiff has suffered racial slurs and derogatory actions from coworkers." Answer, ¶ 9. This Court held that "[i]f the plaintiff has succeeded on 'any significant issue in litigation which achieved some of the benefit the parties sought in bringing suit' the plaintiff has crossed the threshold to a fee award of some kind". *Texas State Teachers v. Garland Ind. Sch. District*, 109 S.Ct. 1486, 1493 (1989). This Court further held that "[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute". *Id.* This Court

explained that "[w]here such a change has occurred, the degree of the plaintiff's overall success goes to the reasonableness of the award under *Hensley*, not to the availability of a fee award *vel non*". *Id.* Stated another way, "the degree of the plaintiff's success in relation to the other goals of the lawsuit is a factor critical to the determination of the size of a reasonable fee, not to eligibility for a fee award at all". *Id.* at 1492. This Court expressly rejected any comparative assessment of which form of relief is more important, primary or central to the action, reasoning that:

> By focusing on the subjective importance of an issue to the litigants, it asks a question which is almost impossible to answer. Is the "primary relief sought" in a disparate treatment action under Title VII reinstatement, back-pay, or injunctive relief? This question, the answer to which appears to depend largely on the mental state of the parties, is wholly irrelevant to the purposes behind the fee shifting provisions, and promises to mire district courts entertaining fee applications in an inquiry which one commentator has described as "excruciating". Creating such an unstable threshold to fee eligibility is sure to provoke prolonged litigation, thus deterring settlement of fee disputes and ensuring that the fee application will spawn a second litigation of significant dimension. In sum, the search for the "central" and "tangential" issues in the lawsuit, or for the "primary" as opposed to the "secondary" relief sought, much like the search for the Golden Fleece, distracts the district court from the primary purposes behind § 1988 and is essentially unhelpful in defining the term "prevailing party" *Id.* at 1493.

The plaintiff clearly satisfied the foregoing standard for prevailing party status. The plaintiff gained the injunction and

declaratory judgment which he sought in n his complaint.
R.1, p. 4.

II. PLAINTIFFS WHO C OBTAIN INJUNCTIVE RELIEF ARE E NTITLED TO FEES AND EXPENSES UNDER 42 U.S.C. § 1988

At the time this case went to trial, Tit tle VII did not provide a means for recovering compensatory or r punitive damages for being subjected to a racially hostile envir onment, nor did Section 1981. *Patterson v. McLean Trucking*, 10 9 S.Ct. 2363 (1989); *cf.*, *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515 (11th Cir. 1991). Declaratory and injunctive relief were the only remedies available to the plaintiff to stop incidents consti tuting a racially hostile environment, such as the hangman's n noose being put in his toolbox; placed around his neck; and be eing subjected to racial slurs. This Court has directly held that a n injunction without an accompanying monetary judgment is su fficient to become the prevailing party and have fees awarded. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 415, 95 S.Ct. 2362, 2370, 45 L.Ed.2d 280 (1975). The Court reiterated in *Albemarle Paper Co.* that "the great public interest in having unction actions brought could be vindicated only if successful plaintiffs acting as 'private attorneys' general' were awarded attorneys' fees in all but very unusual circumstances". *Id.* 422 U.S. at 415.

---

[2] As this Court held in *Albemarle Paper Co.*, *supra*, remedies in Title VII cases "should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination". *Albemarle*, 422 U.S. at 412, 95 S.Ct. at 2371. The Court rejected a "regime of discretion that produces different results for breaches of duty in situations that cannot be differentiated in policy". *Id.* 422 U.S. at 417, 95 S.Ct. at 2371. That would be the result if fees were not awarded where a Judgment of racial harassment is entered along with an injunction.

The plaintiff's situation here is typical of all racial harassment claims.[2] Denial of fees to this plaintiff for achieving an injunction against a racially hostile work environment will mean that such claims cannot be prosecuted on a contingent fee basis and plaintiffs will be unable to attract counsel to undertake such claims. This is exactly what this Court warned against when it held in *Albemarle Paper* and *Newman v. Piggie Park* that injunctive relief is enough to make the plaintiff's counsel eligible for a fee. In *Albemarle Paper* this Court held that "the strong public interest in having injunctive actions brought under Title VII to eradicate discriminatory employment practices ... can be vindicated by applying the *Piggie Park* standard to the attorney's fees provision of Title VII". *Id.* The *Piggie Park* standard on attorney's fees requires fees where no monetary remedies are achieved or available because a plaintiff who "obtains an injunction does so not for himself alone, but also as 'a private attorney general' vindicating a policy that Congress considered of the highest priority". *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402, 88 S.Ct. 964, 966 (1968).[3] This Court also held that:

> If successful plaintiffs were routinely forced to bear their own attorney's fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts. Congress therefore enacted the provision for counsel fees -- not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief under Title II. *Id.*

See also, *Sanchez v. City of Miami Beach*, 720 F. Supp. 974, 983 (S.D. Fla. 1989) (Court held that the "[p]laintiff succeeded on the

[3] Even the entry of a formal injunction, however, is not always required as a predicate to becoming a prevailing party for fee purposes. Once a plaintiff prevails on the merits through a jury verdict it does not matter whether formal relief is entered or awarded. (continued)

central issue in the suit, establishing that there exists a violation of the Civil Rights Act of 1964").

The Court of Appeals found under the *Garland* test that Mr. Ruffin prevailed, because the actual relief on the merits of his hostile racial work environment claim materially altered the legal relationship between the parties in a way that directed benefitted him. First, the defendant who previously denied there was a racially hostile environment pursuant to the injunction was **required** to be more aggressive in providing black workers with a racially neutral environment. *Ruffin*, 969 F.2d at 993. The Court of Appeals found that this undoubtedly affected Great Dane's behavior toward Mr. Ruffin. *Id.* Furthermore, Great Dane as a

---

In *Maher v. Gagne*, 448 U.S. 122, 129, 100 S.Ct. 2570, 2575, 65 L.Ed.2d 653 (1980), this point was made in holding that "[n]othing in the language of § 1988 conditions the District Court's power to award fees ... on a judicial determination that the plaintiff's rights have been violated". *Id.* This Court found that the Congressional history "expressly stated that 'for purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights ... without formally obtaining relief". *Id.* 448 U.S. at 129 [quoting S. Rep. #94-1011, p. 5 (1976), U. S. Code Cong. & Admin. News 1976, pp. 5508, 5512]. In *Hewitt v. Helms*, 107 S.Ct. 2672, 2676 (1987), this Court held that "[i]t is settled law, of course, that relief need not be judicially decreed in order to justify a fee award". *Dunn v. State of Florida*, 889 F.2d 1010, 1013 (11th Cir. 1989), reiterated what the former Fifth Circuit had earlier concluded:

> The Act's legislative history evinces a clear Congressional intent to award attorney's fees even when no formal judicial relief is obtained and no final judicial determination is made on any constitutional claim. The Senate Report explains that "parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief". *Id.* (emphasis supplied) [quoting *Robinson v. Kimbrough*, 652 F.2d 458, 465 (5th Cir. 1980)].

result of the injunction was required to correct the racist behavior at its jobsite. *Id.* Mr. Ruffin as a result of the lawsuit could protect his rights through a civil contempt proceeding if Great Dane did not comply with the injunction. *Id.*

An injunction against the racially hostile work environment in which he was required to work was one of the central remedies, if not the central one sought in the original Complaint. In three paragraphs of the Prayer for Relief in the Complaint, two of them request the very declaratory and injunctive relief that was awarded. R.1-1, p. 4. The Prayer for Relief in the Complaint reads as follows:

> IV. PRAYER FOR RELIEF
>
> WHEREFORE, the plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:
>
> 1 Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the defendant are violative of the rights of the plaintiff as secured by Title VII of the Act of Congress known as the "Civil Rights Act of 1964", as amended, 42 U.S.C. Section 2000e et seq.
>
> 2. Grant plaintiff a permanent injunction enjoining the defendant, its agents, successors, employees, attorneys and those acting in concert with the defendant and at the defendant's request from continuing to violate and Title VII of the Act of Congress known as the "Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.
>
> 3. Enter an Order requiring the defendant to make the plaintiff whole by awarding him the position he would have had occupied in the absence of race discrimination, back-pay (plus interest), compensatory damages, lost seniority, benefits and loss of pension.

The plaintiff won the relief sought in paragraphs 1 and 2 of his Prayer for Relief. It is impossible to say that such relief is unimportant or "insignificant" without making a mockery of Title VII.

The Complaint also specifically alleges that monetary relief is inadequate to make the plaintiff whole and that injunctive and declaratory relief is a necessary remedy. R.1-1, p.3. In paragraph 12 of the Complaint it states that:

> 12. The plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for ... an injunctive and declaratory judgment is his only means of securing adequate relief. The plaintiff is now suffering and will continue to suffer irreparable injury from the defendant's unlawful policies and practices as set forth herein unless enjoined by this Court. R.1-1, p. 3.

The findings below also make clear that the racial harassment claim was the essential premise of the challenge of plaintiff's pay, discipline and work assignments. Tr. 397, 400-401, 410-412. The trial court recognized that these other claims were largely driven by the racial harassment claim. For example, in regard to the discriminatory pay claim the district court recognized in its findings that it was "related" to the harassment claim, because in order to resolve it the court had to determine whether the performance deficiencies articulated as the reason for the denial of pay raises were caused by the racial harassment. Tr. 410-411, 401. The trial court held that "one of the aspects that is most difficult for the court to deal with here is a determination as to whether this racially hostile environment ... contributed to or caused the inadequacies in performance which in turn have resulted in the failure to get pay raises". Tr. 410-411. Although the court eventually decided that the racial harassment did not cause the performance problems articulated as the basis for the denial of a

pay increase, the necessity of deciding that issue as a part of the pay claim demonstrated that the racial harassment was not only important in its own right as an independent cause of action, but was also important as a part of the proof of the other causes of action.

In order to prove the violation of Title VII for a racially hostile work environment which the district court found to exist, the plaintiff had to prove that the harassment was "sufficiently severe and persistent to affect seriously the psychological well being of employees". *Henson v. City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982). The plaintiff carried this burden, which is not an easy thing to do. Once such "severe and persistent" harassment is proven to "seriously affect the psychological well being" of the plaintiff, an injunction is necessary to end the harassment and to allow the plaintiff to work in a racially neutral environment. The Court of Appeals stated the fact that the court mandated the implementation of procedures that would ensure against the reoccurrence of violations was not negated by no monetary relief being ordered. *Id.* at 994. The defendant had refused to concede that a racially hostile work environment existed and that its actions had been inadequate. A court resolution was required to settle that dispute. The plaintiff was clearly the prevailing party, because the court declaration that the defendant violated Title VII by having such hostile work environment necessarily changed the legal relationship between the parties. It foreclosed the defendant's denial of the existence of such racial harassment and the injunction enjoined it to take "appropriate steps" in the future "to create a work environment that will not be racially offensive". R.1-38.

III. INJUNCTIVE RELIEF IS NOT NOMINAL RELIEF, BUT RATHER SERVES THE REMEDIAL PURPOSES OF TITLE VII

The defendant argues this to be an unimportant or nominal injunction. This reveals its contempt for Title VII and the injunction that was entered. Such a finding and injunction is not merely technical, de minimis or unimportant. "The language of Title VII is not limited to 'economic' or 'tangible' discrimination." *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 106 S.Ct. 2399, 2404-05, 91 L.Ed. 49 (1986). "Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule and insult." *Id.* at 65, 106 S.Ct. 2406. The injunction against racial harassment and the order "to take appropriate steps to create a work environment that will not be racially offensive" necessarily created a "material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute". *Garland, supra*, 109 S.Ct. at 1493.

The primary objective of Title VII was a prophylactic one:

> "It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of employees over other employees." *Albemarle, supra*, 422 U.S. at 417, 95 S.Ct. 2371 (quoting *Griggs v. Duke Power Co.*, 401 U.S. at 429-430, 91 S.Ct. at 853).

Injunctive relief is a primary tool to eradicate illegal hostile working environments. To characterize such relief as insignificant is tantamount to a callous disregard toward such things. An end to such harassment and a guarantee against its recurrence was the "central issue" and the primary relief sought in the action. Indeed, in most harassment claims it is the only relief possible. *Bundy v. Jackson*, 641 F.2d 934, 946 n.12 (D.C. Cir. 1981).

After having Great Dane's denial of racial harassment or a violation of Title VII rejected by the court below, the legal relationship of the parties was necessarily changed in the manner intended by Congress. The defendant contended below that its conduct did not violate Title VII and has now been told that it does so in a definitive manner. That is exactly the purpose intended by Congress in allowing litigation of such claims. Without such litigation, companies would be free to pretend, as this defendant did, that nothing more than a pro forma approach to racially hostile environment is all that is required in response to severe and persistent harassment. The declaratory judgment and injunction serve the important corrective function of rejecting that view and telling this defendant, and others, that the Act is violated when they knew or should have known of the harassment and fail to take meaningful remedial action. Paying the fees and expenses for resolving such disputes is the "spur or catalyst which causes employers and unions to self - examine and to self - evaluate their employment practices and to endeavor to eliminate" such practices which will not be done without the risk of incurring such fees and expenses. *cf. Albemarle Paper Company,* 422 U.S. at 417-418, 95 S.Ct. 2371 -2372.

Defendant's argument that it would have been put to the cost of an appeal that it otherwise would not have to incur by appealing the injunction is unavailing. D. Pet. at. 11. The plaintiff had already appealed the case. No additional cost would have been incurred by defendant in appealing the case, since it already had been appealed. The reality is that the injunction was due to be entered as a result of the plaintiff's efforts and no real defense to its entry could be made.

IV. THE ELEVENTH CIRCUIT OPINION IS CONSISTENT WITH THE HOLDING IN *FARRAR*

Farrar v. Hobby, 61 USLW 4033 (1992) does not affect the holding of the Court of Appeals. First, under the clear holding in *Farrar* a plaintiff prevails on the merits when the relief he obtains changes the legal relationship between them in a way that directly benefits the plaintiff. Here, it is the injunction to aggressively eliminate the racially hostile environment which the defendant denied existed. *Farrar* recognized that once there has been the alteration of the relationship, the degree of success goes to the reasonableness of the fee to be awarded. *Id.* at 4036 citing *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 1937, 76 L.Ed.2d 40 (1983). That part has been remanded for the district court to determine. The Court of Appeals holding is consistent with *Farrar* and does not require the review of this Court.

Second, the Court of Appeals anticipated the holding of *Farrar* and stated that this case is different from cases involving nominal damages, because the injunction materially altered the relationship between Ruffin and Great Dane in a way that an award of nominal damages does not. *Id.* at 994 n. 3. Great Dane was subject to a contempt proceeding if the racially hostile environment was not eradicated. *Farrar* stated that there is a material alternation of the legal relationship between the parties when the plaintiff becomes entitled to enforce a judgment, consent decree or settlement against the defendant. *Farrar*, USLW at 4036. Having accomplished that, the plaintiff here was a prevailing party. *Id.*

Assuming that *Farrar* is read in the manner the Justice O'Conner seems to indicate by considering the degree of success with prevailing party status, the Eleventh Circuit's holding is still consistent. The case still has to be considered in by the district

court in awarding reasonable fees considering the degree of success under *Hensley*. This case also is factually distinguishable in three ways. *Farrar v. Hobby* was: (1) A suit purely for money damages ($17 million to remedy the taking of property when a school was closed); (2) Resulted in an award only of nominal damages of one dollar when $17 million had been sought (against one of six defendants); and (3) Served no discernable public purpose. In the current case, on the other hand it: (1) Was a suit for injunctive and declaratory relief; (2) Did result in declaratory and injunctive relief against a racially hostile work environment; and (3) Served a public purpose, both by affecting the plaintiff in his work environment and others working there too, by requiring the defendant to be more aggressive in eradicating the racially hostile environment.

V. A PUBLIC PURPOSE IS SERVED BY ENJOINING RACIAL HARASSMENT

Serving the public purpose is accomplished by obtaing an injunction in racial harassment claims where typically there is no monetary loss that would support an award of back-pay and there is never any compensatory or punitive damages allowed. *See, Bundy v. Jackson, supra,* 641 F.2d at 946 n.12. This Court and Courts of Appeal have held that these claims are actionable under Title VII even absent any economic loss. *Meritor Savings Bank v. Vinson,* 417 U.S. 57, 106 S.Ct. 2399, 2404-05, 91 L.Ed. 49 (1986), *Henson v. City of Dundee, supra.* If, however, fees and expenses are not awardable without a monetary recovery, then there can rarely, if ever, be a fee and expenses award, because rarely is there a monetary award in a racial or sexual harassment case. Like all other Title VII claims, racial and sexual harassment cannot be challenged in the courts without fee awards, because the victims of racial and sexual harassment will be unable to attract counsel to undertake them without such awards. Under the defendant's approach, the victims of a hostile work environ-

ment will simply not have access to the courts unless they gain a monetary verdict. *See, Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 1937, 76 L.Ed.2d 40 (1983) ("The purpose of § 1988 is to ensure 'effective access to the judicial process' for persons with civil rights grievances".). *See also, Ross v. Double Diamond, Inc.*, 672 F. Supp. 261, 278 (N.D. Tex.) ("The legislative history specifically recognizes that many plaintiffs in civil rights cases have little or no money. In recognition of this fact, the legislative history goes on to state that if a private citizen successfully brings suit and forces one to cease violating the civil rights laws, then the citizen should be able to recover the costs to vindicate civil rights. The legislative history then goes on to make it clear that the purpose of allowing a successful plaintiff to recover reasonable attorney's fees is to create 'private attorney generals' who will vigorously enforce the civil rights laws".). To deny Mr. Ruffin fees and expenses is to further victimize him by having him bear the cost of having his employer declared to have violated Title VII by having a racially hostile environment and having it enjoined. Congress did not intend such a result. *City of Riverside v. Rivera*, 477 U.S. 561, 574, 106 S.Ct. 2686, 2694, 91 L.Ed.2d 466 (1986). "Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued in monetary terms". *Id.* [citing *Carey v. Piphus, 435 U.S. at 266, 98 S.Ct. at 1053-55].* This Court reminded us again that "Congress has determined that 'the public as a whole has an interest in the vindication of the rights conferred by the statutes over and above the value of a civil rights remedy to a particular plaintiff" and "[r]egardless of the form of relief he actually obtains, a successful civil rights plaintiff often secures important social benefits that are not reflected in nominal or relatively small damage awards". *Id.* 477 U.S. at 574-575, 106 S.Ct. at 2694 [quoting in part from *Hensley v. Eckerhart*, 461 U.S. 424, 444 n.4, 103 S.Ct. 1933, 1945 n.4, 76 L.Ed.2d 40 (1983)].

The distinction between this case and *Farrar* is that in *Farrar* no public purpose was accomplished. "Given that Jospeh Farrar got **some** of what he wanted - one seventeen millionth, to be precise - his success might be considered material **if it also accomplished some public goal** other than occupying the time and energy of counsel, court, and client." *Farrar, supra* at 4038 (O'Conner concurring)(emphasis supplied). No such public goal was present in *Farrar*. Here, to the contrary a public purpose was accomplished by obtaining the injunction which required more aggressive action to eradicate a racially hostile environment which black employees had been forced to endure. The prophylactic primary objective of Title VII to remove barriers in employment was accomplished in this case. No such purpose was accomplished in *Farrar*.

The defendant attempts to claim that there has not been a material alteration of the legal relationship of the parties. This is not true. Defendant had claimed that Mr. Ruffin had not been subjected to a racially hostile work environment. Mr. Ruffin had been subjected to a hangman's noose being placed around his neck and was subjected to numerous racial slurs, jokes, and epithets. The evidence also established that other black employees had also been subjected to slurs and epithets. The Court held Mr. Ruffin had been subjected to a racially hostile work environment. Defendant had contended that it had taken sufficient action in response to racial slurs, jokes and other actions. The Court held it had not. Pursuant to the Court's injunction any further complaints had to be viewed in a completely different light (much more seriously by the defendant) and the defendant had to be more aggressive in eradicating the racially hostile environment. If it did not, Mr. Ruffin had an enforceable order which he could enforce by contempt proceedings.

If injunctive relief were not necessary to alter the defendant's conduct, it would not have been entered below. Where there is

"no reasonable probability of further noncompliance with the law", an injunction is not entered. *James v. Stockham Valves & Fittings Co.*, 559 F.2d 310, 354 (5th Cir. 1977), *cert. denied*, 434 U.S. 1034 (1978). The trial court in the current case specifically found that the defendant had not taken sufficient voluntary action to correct the racially hostile work environment and that an injunction was necessary to provide a "sufficiently racially neutral environment for Mr. Ruffin and other blacks to perform their work in". Tr. 413. The Court below held that the defendant must "be more affirmative and more aggressive in its efforts to correct that environment in the shop". Tr. 414. Defendant did not challenge the entry of the injunction. If there had in reality been no basis for its entry, all that would have been required would have been to cross appeal its entry after plaintiff appealed the denial of expenses and fees. Defendant did not do so, because the record fully supported the necessity of entering the injunction. Thus, the argument that the injunction had minimal significance particularly when it had not been challenged by the defendant was untenable. To so hold would have stripped the meaning of the district court's determination that there was a racially hostile environment and the defendant was required to aggressively eradicate it. *Ruffin*, 969 F.2d at 995.

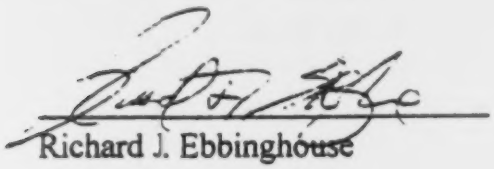
Defendant tries to analogize this case to others. Pet. at 20-22. None of those involved a racially hostile work environment, obtaining an injunction, or any significant relief as a result of the litigation. None of them serve to overrule *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402, 88 S.Ct. 964, 965 (1968). An examination of a few of them shows the distinction. In *Hewitt v. Helms*, 482 U.S. 755, 766, 107 S.Ct. 2672, 2675-76, 96 L.Ed.2d 654 (1987), this Court held that the plaintiff was not a prevailing party because "[n]o injunction or declaratory relief was entered in his favor" and he "obtained no relief" whatsoever. The plaintiff would have prevailed if he obtained the "equivalent" of declaratory or injunctive relief without formally gaining such relief so

long as he changed the defendant's conduct in the same way that would have resulted from an injunction or declaratory judgment. *Id.* Here, the plaintiff directly obtained an injunction and a declaratory relief. In *Slade v. United States Postal Service*, 952 F.2d 357 (10th Cir. 1991) it was held that considering his misdemeanor convictions that were job related for rejecting him on past applications was appropriate. The end result of the proceedings was the United States Postal Service could consider them. The court held that since the plaintiff had been deemed to be ineligible prior to filing the proceedings and was still ineligible for employment for the jobs for which he had applied, there had been no change in the legal relationship. *Christopher P. v. Marcus*, 915 F.2d 794 (2nd Cir. 1990), *cert. denied*, 111 S.Ct. 1081 (1991) cited by defendant held that no final order favorable to the plaintiff's had been entered, so no fees were due to be awarded. None of the cases cited by the defendant can stand on the same footing to the instant case that declared that a racially hostile work environment exists and requires the defendant to eradicate it.

CONCLUSION

Consistent with both *Garland* and *Farrar*, the plaintiff by obtaining the declaratory judgment and injunction enjoining the defendant was a prevailing party under 42 U.S.C. § 1988. The case is set for a hearing on the fees in light of the plaintiff's prevailing party status. The amount has yet to be determined. The remedial purposes of Title VII and the public purpose were advanced by enjoining the defendant and requiring the eradication of racially motivated actions of its employees such as the use of hangman's nooses, racial slurs, and epithets. The proceedings in this case are consistent with this Court's holdings. Certiorari is due to be denied.

Respectfully submitted,



Richard J. Ebbinghouse
Counsel for Respondent

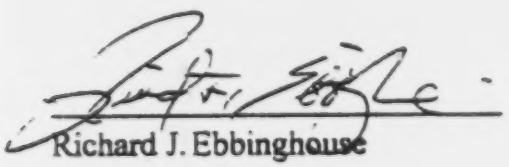
OF COUNSEL:
GORDON, SILBERMAN, WIGGINS & CHILDS, P.C.
1400 SouthTrust Tower
Birmingham, Alabama 35203

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing has been served by placing a copy of same in the United States Mail, postage pre-paid and addressed as follows:

James B. Spears, Jr.
HAYNSWORTH, BALDWIN, JOHNSON & GREAVES
901 West Trade Street
Charlotte, NC 28202

DATED this 13th day of January, 1993.



Richard J. Ebbinghouse